No. 2199

IN THE

United States Circuit Court of Appeals

NINTH CIRCUIT

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Plaintiff in Error,

vs.

ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Defendant in Error.

On Writ of Error to the United States District Court, District of Oregon

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TRANSCRIPT OF RECORD.

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Plaintiff in Error,

vs.

ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Defendant in Error.

Names and Addresses of Attorneys Upon This Writ:

For the Plaintiff in Error:

PAGE, McGUTCHEON, KNIGHT and OLNEY,
San Francisco, Cal.

DOLPH, MALLORY, SIMON and GEARIN,
Mohawk Bldg., Portland, Oregon

For the Defendant in Error:

CAREY and KERR,
Yeon Bldg., Portland, Oregon

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In the District Court of the United States, for the District of Oregon.

Be it Remembered, That on the 10 day of April, 1911, there was duly filed in the Circuit Court of the United States for the District of Oregon. a Transcript on Removal, in words and figures as follows, to wit:

[Complaint.]

IN The Circuit Court of the State of Oregon for the County of Multnomah.

ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

The plaintiff for cause of action against the above named defendant complains and alleges:

I.

That at all times hereinafter mentioned the plaintiff was and still is a corporation duly organized and existing under the laws of the State of Oregon, having its office and principal place of business at Portland, in the county of Multnomah, State of Oregon, and has duly complied with all the laws of the State of Oregon authorizing it to transact business in said state.

II.

That at all times hereinafter mentioned the defendant was and still is a corporation duly organized and existing under the laws of the State of New York, and qualified to do business in the State of Oregon, and has, and maintains an office and place of business in that state.

III.

That the plaintiff was the owner of the following personal property at a salmon cannery belonging to it in the territory of Alaska at the time of its insurance and destruction by fire as hereinafter mentioned:

All tin, tin cans manufactured and in process of manufacture, all materials for making and finishing the same; all salmon, pickled, frozen and or canned, packed and in process of packing; all nets, rope, web, ice, twine, thread, salt, sugar, paper, lead, corks and lines; barrels packing boxes and labels; all other products, materials and supplies incident to the canning, packing, freezing and pickling of salmon, while contained in a certain frame building, additions, shed, adjoining and communcating, occupied by the plaintiff as a salmon cannery and situate at Nushagak, Bristol Bay, Alaska, or on the wharves and platforms connected therewith.

IV.

That on the 1st day of May, 1910, in consideration of the payment by the plaintiff to the defendant of the premium of $125.00, the defendant by its agents duly authorized thereto, made, executed and delivered to

the plaintiff its policy of insurance in writing in amount $5,000.00, upon and covering all of the property hereinabove described and insuring said property and the whole thereof against loss or damage by fire to the said amount of $5,000.00, for the period of one year from the date of said policy.

V.

That under and by virtue of the terms of said policy other insurance upon said said property was permitted, and plaintiff placed thereon insurance, including the amount of insurance by the defendant, in a total amount, $152,141.09, which was in full force and covered said property at the time of its destruction by fire as herein alleged.

VI.

That it was provided by the terms of said policy that the defendant should not be liable under the same for a greater proportion of any loss on the described property than the amount insured should bear to the whole insurance covering such property.

VII.

That on the 10th day of August, 1910, the property aforesaid was totally destroyed by fire while situated in the said buildings and on the wharves and platforms connected therewith, which fire did not happen from any of the causes excepted in the policy.

VIII.

That the plaintiff's net loss by reason of said fire and the destruction of said property was, and is, the full sum of $154,477.07, which was, and is, the actual

value of the property so destroyed by the fire aforesaid.

IX.

That by reason of the premises, the defendant became and is liable to pay to the plaintiff on account of such loss, the full amount of said policy, to wit, $5,000.00.

X.

That in accordance with the provisions of said policy and immediately subsequent to said loss, this plaintiff gave notice in writing to the defendant thereof within sixty days after said fire and on, to wit, the 30th day of September, 1910, the plaintiff rendered a statement to the defendant, signed and sworn to by a duly authorized agent of the plaintiff, setting forth the time, the origin of the fire, the value of the property and the amount of loss thereon, and all other matters and things as by said policy required, and the plaintiff has in all respects complied with the conditions of said policy on its part to be performed.

XI.

That on, to wit, the said 30th day of September, 1910, and at various times subsequent thereto, the plaintiff demanded payment of said loss, but the defendant has not paid the same nor any part thereof.

WHEREFORE, plaintiff prays judgment against the defendant in the sum of $5,000.00, with interest thereon from the 30th day of September, 1910, at the

legal rate, and for costs and disbursements of this action.

CAREY AND KERR,
HARRISON ALLEN,
Attorneys for Plaintiff.

STATE OF OREGON,
County of Multnomah—ss.

I, F. M. Warren, being first duly sworn, on oath say, that I am the president of Alaska-Portland Packers' Association; that I have read the foregoing complaint, know the contents thereof, and the same is true as I verily believe.

FRANK M. WARREN.

Subscribed and sworn to before me, this 13th day of March, 1911.

[Notarial Seal.] G. C. FRISBIE,
Notary Public for Oregon.

[Endorsed]: Filed Mar. 16, 1911.
F. S. FIELDS,
Clerk,
By R. A. Reid, Deputy.

[Summons.]

In the Circuit Court of the State of Oregon, for the County of Multnomah.

ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,
Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

To Globe & Rutgers Fire Insurance Company, Defendant:

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and answer the complaint filed against you in the above entitled action within ten days from the date of service of this Summons upon you, if served within this County; or if served within any other County of this State, then within twenty days from the date of the service of this Summons upon you; and if you fail so to answer for want thereof, the plaintiff will take judgment against you for the sum of five thousand dollars ($5,000.00) with interest thereon from the 30th day of September, 1910, at the legal rate, and for the costs and disbursements of this action.

CAREY & KERR and
HARRISON ALLEN,
Attorneys for Plaintiff.

STATE OF OREGON,
County of Multnomah—ss.

I hereby certify, that I served the within summons within the said State and County on the 20 day of March, 1911, on the within named defendant, Globe & Rutgers Fire Insurance Company, a corporation, by delivering a copy thereof, prepared and certified to by Carey & Kerr, attorneys for plaintiff, together with a copy of the complaint, prepared and certified

to by Harrison Allen, of attorney for plaintiff to Walter P. Porep, Statutory and Resident Agent for the said defendant corporation, personally and in person.

R. L. STEVENS,
Sheriff of Multnomah County, Oregon.
By Jn. Bulger, Deputy.

Recd. 9:36 A. M.,
R. L. STEVENS,
Nov. 16, 1911,
Sheriff of Multnomah County, Oregon,
By J. H. J., Deputy.

[Endorsed]: Filed Mar. 24, 1911.
F. S. FIELDS,
Clerk.
By R. A. Reid, Deputy.

[Petition for Removal.]

In the Circuit Court of the State of Oregon for the County of Multnomah.

ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,
Plaintiff,
vs.
GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,
Defendant.

To the Honorable Judges of the Circuit Court of the State of Oregon for Multnomah County:

Your petitioner respectfully shows to this Honorable Court that the matter and amount in dispute in the above entitled suit exceeds the sum or value of two thousand dollars, exclusive of interest and costs.

That the controversy in said suit is, and at the time of the commencement of this suit was, between citizens of different States, and that your petitioner, the defendant in the above entitled suit, was at the time of the commencement of the suit, and still is, a corporation organized under the laws of the State of New York, and a resident and citizen of the City, County and State of New York, and a non-resident of the State of Oregon; and that the plaintiff, Alaska-Portland Packers' Association was then and still is a corporation organized under the laws of the State of Oregon, and a resident of and citizen of the City of Portland, County of Multnomah and State of Oregon; that summons and complaint in this action was served upon your petitioner on the 20th day of March, 1911, and that the time within which your Petitioner, the defendant above named, is required by the laws of the State of Oregon and rules of the Circuit Court of the State of Oregon for the County of Multnomah, to answer or plead to said complaint has not expired.

And your petitioner offers herewith good and sufficient surety for its entering in the Circuit Court of the United States for the District of Oregon, on the 1st day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said Circuit Court, if said Court shall hold that this suit was wrongfully or improperly removed thereto.

And it prays this Honorable Court to proceed no further herein except to make the order of removal required by law, and to accept the said surety and bond, and cause the record herein to be removed into said Circuit Court of the United States in and for the District of Oregon; and it will ever pray;

GLOBE, RUTGERS FIRE INSURANCE COMPANY,

By Walter P. Porep, Resident General Agent.

Petitioner.

PAGE, McCUTCHEON, KNIGHT and OLNEY, and DOLPH, MALLORY, SIMON & GEARIN,

Petitioner's Attorneys.

STATE OF OREGON,

County of Multnomah—ss.

I, Walter P. Porep, being first duly sworn say that I am the Statutory Agent and Attorney in Fact in the State of Oregon of the above named defendant, Globe & Rutgers Fire Insurance Company and duly authorized by law to accept service of summons in all actions brought against the said Globe & Rutgers Fire Insurance Company, and to make this affidavit. And I further depose and say that the foregoing petition is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

WALTER P. POREP,

Sworn to before me this 28th day of March, A. D., 1911.

[Notarial Seal]: B. B. McCARTHY,

Notary Public for Oregon.

On this 28th day of March, A. D., 1911, in the City of Portland, County of Multnomah and State of Oregon, personally appeared before me, a Notary Public in and for said County of Multnomah and State of Oregon, Walter P. Porep, to me known to be the individual who executed the foregoing Petition and who signed the same on behalf of the Globe & Rutgers Fire Insurance Company, and then and there acknowledged to me that he executed the same.

[Notarial Seal.] B. B. McCARTHY,
Notary Public for Oregon.

[Endorsed]: Filed Mar. 29, 1911.
F. S. FIELDS,
Clerk.
By R. A. Reid, Deputy.

[Bond on Removal.]

In the Circuit Court of the State of Oregon for Multnomah County

ALASKA-PORTLAND PACKERS ASSOCIATION, a corporation,
Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,
Defendant.

KNOW ALL MEN BY THESE PRESENTS, That we, Globe & Rutgers Fire Insurance Company, a corporation, as Principal, and the American Surety Company of New York, as Surety, are holden and stand firmly bound unto the Alaska-Portland Packers

Association in the penal sum of Five hundred dollars, for the payment of which, well and truly to be made unto the said, Alaska-Portland Packers' Association, their successors, representatives or assigns, we bind ourselves, our heirs and personal representatives, jointly and severally, firmly by these presents. Upon condition nevertheless, that,

Whereas the said Globe & Rutgers Fire Insurance Company, has filed its Petition in the Circuit Court of the State of Oregon for the County of Multnomah for the removal of a certain case therein pending wherein the Alaska-Portland Packers' Association, a corporation, is plaintiff, and Globe & Rutgers Fire Insurance Company is defendant, to the Circuit Court of the United States for the District of Oregon, now,

If the said Globe & Rutgers Fire Insurance Company shall enter into said Circuit Court of the United State for the District of Oregon on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said Circuit Court, and if said Court shall hold that said suit was wrongfully and improperly removed thereto, and shall also appear and enter special bail in said suit if special bail was originally requisite therein, then the above obligation shall be void, otherwise it shall remain in full force and virtue.

In witness whereof, we, the Globe & Rutgers Fire Insurance Company, as Principal, and the American Surety Company of New York as Surety, have here-

unto set our hands and seals this the 29th day of March, A. D., 1911.

GLOBE & RUTGERS FIRE INSURANCE CO.

By Walter P. Porep, Resident General Agent American Surety Company of New York.

[Corporate Seal.]

By M. A. ZOLLINGER,
Resident Vice President.

Attest: A. Edward Krull,
Resident Ass't Secretary.

Approved March 29, 1911.

C. U. GANTENBEIN,
Judge.

[Endorsed]: Filed Mar. 29, 1911.

F. S. FIELDS,
Clerk.
By R. A. Reid, Deputy.

[Order of Removal.]

BE IT REMEMBERED, That at a regular term of the Circuit Court of the State of Oregon, for the County of Multnomah, begun and held at the County Court House in the City of Portland, in said County and State on MONDAY, the 6th day of March A. D., 1911, the same being the first MONDAY in said month, and the time fixed by law for holding a regular term of said Court.

Present, Hons. John P. Kavanaugh, Robert G. Morrow, Henry E. McGinn, C. U. Gantenbein and William N. Gatens, Judges.

Whereupon, on this Wednesday the 29th day of

March, A. D., 1911, the same being the 21st Judicial day of said term of said Court, among other proceedings the following was had, to wit:

In the Circuit Court of the State of Oregon for Multnomah County.

ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

The defendant herein having within the time provided by law filed its Petition for removal of this case to the Circuit Court of the United States for the District of Oregon, and having at the same time offered its Bond in the sum of five hundred dollars with American Surety Company of New York, good and sufficient surety, pursuant to Statute and conditioned according to law.

Now therefore, this Court does hereby accept and approve said Bond and accept said Petition and does order that this case be removed for trial to the next Circuit Court of the United States for the District of Oregon, pursuant to Statute of the United States and that all other proceedings of this Court be stayed.

March 29, 1911.

C. U. GANTENBEIN,

Judge.

[Clerk's Certificate.]

In the Circuit Court of the State of Oregon for the County of Multnomah.

STATE OF OREGON,

County of Multnomah—ss.

I, F. S. Fields, County Clerk and Ex-Officio Clerk of the Circuit Court of the State of Oregon for the County of Multnomah, do hereby certify that the foregoing copies of Pleadings, Papers, Orders and Journal Entries constituting all the proceedings had in case of Alaska-Portland Packers' Association, a corporation, Plaintiff,

vs.

Globe & Rutgers Fire Insurance Company, a corporation, Defendant, have been by me compared with the originals thereof, and that they are true and correct transcripts of such original Pleadings, Papers, Orders, Journal Entries as the same appear of record and on file at my office and in my custody.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Circuit Court the 3rd day of April, 1911.

[Seal.] F. S. FIELDS,
Clerk.
By H. C. Smith, Deputy.

[Endorsed]: Transcript. Filed April 10, 1911.
G. H. MARSH,
Clerk.

And afterwards, to wit, on the 21 day of July, 1911, there was duly filed in said Court, an Answer, in words and figures as follows to wit:

[Answer.]

In the Circuit Court of the United States, for the District of Oregon.

ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

Comes now the defendant, and, in answer to the allegations of the complaint herein, admits, denies and alleges as follows:

I.

Defendant admits the allegations of paragraph I of said complaint.

II.

Defendant admits the allegations of paragraph II of said complaint.

III.

Defendant has no knowledge or information of the allegations of paragraph III of said complaint sufficient to form a belief as to the truth thereof and, placing its denial upon that ground, denies that plaintiff was the owner of the following ,or any, personal property at a salmon cannery, belonging to plaintiff in the territory of Alaska at the time of its insurance and destruction by fire, or insurance, or destruction by fire, or at any other time, as hereinafter mentioned;

all, or any, tin, tin cans manufactured and in process of manufacture, or manufactured or in process of manufacture, or all, or any, materials for making and finishing, or making or finishing the same, or any; all, or any, salmon, pickled, frozen and canned, or pickled or frozen or canned, packed and in process of packing, or packed or in process of packing; all, or any, nets, ropes, web, ice, twine, thread, salt, sugar, paper, lead, cork and lines, or nets, or ropes, or web, or ice, or twine, or thread, or salt, or sugar, or paper, or lead, or cork, or lines; or barrels, packing boxes and labels, or barrels or packing boxes or labels, or all, or any other products and materials and supplies, or products or materials or supplies, incident to the canning, packing, freezing and pickling, or canning, or packing, or freezing, or pickling, of salmon while contained in a certain, or any, frame building, additions and shed, or building, or additions, or shed, adjoining and communicating, or adjoining or communicating, occupied by plaintiff as a salmon cannery, and situate at Nushagak, Bristol Bay, Alaska, or while contained in a certain, or any, frame, or other, building, additions and shed, or building, or additions, or shed, adjoining and communicating, or adjoining or communicating, occupied by plaintiff as a salmon cannery, or situate at Nushagak, Bristol Bay, Alaska, or on the wharves and platforms, or wharves or platforms, connected therewith.

IV.

Answering the allegations of paragraph IV of said complaint, defendant admits that on the first day of

May, 1910, in consideration of the payment by plaintiff to defendant of the premium of $125 dollars, defendant, by its agent duly authorized, made, executed and delivered to plaintiff its policy of insurance in writing, in amount $5000 dollars, upon and covering all of the property described in paragraph III of said complaint, and the whole thereof, against loss or damage by fire, in the amount of $5000 dollars; but denies that said policy of insurance covered said property for the period of one (1) year from the date of said policy, and in this behalf alleges that said policy of insurance covered said property for a period not to exceed one (1) year from the date thereof so long as the conditions of said policy were complied with by plaintiff.

V.

Answering the allegations of paragraph V of said complaint, defendant denies that under and by virtue, or under or by virtue, of the terms of said policy mentioned in paragraph IV of the complaint, herein, other insurance upon said property was permitted, but admits that plaintiff placed other insurance upon said property, including the amount of insurance by the defendant, but defendant has no knowledge or information as the total amount of said insurance, sufficient to enable it to form a belief, and placing its denial upon that ground, denies that the total amount of said insurance was the sum of one hundred and fifty-two thousand one hundred and forty-one and 9|100 (152,141.09) dollars;

Answering unto the further allegations of said paragraph, defendant denies that the policy of insurance described in paragraph IV of the said complaint was in force and covered, or was in force or covered, the said property at the time of its destruction by fire, as therein alleged.

VI.

Answering the allegations of paragraph VI of said complaint, defendant denies that it was provided by the terms of said policy that the defendant should not be liable under the same for a greater proportion of any loss on the described property than the amount insured should bear to the whole insurance.

VII.

Answering unto the allegations of paragraph VII of said complaint, defendant denies that on the 10th day of August, 1910, or at any other date, the property mentioned in said complaint was totally destroyed by fire while situated in the said buildings and on the wharves and platforms connected therewith, or while situated in the said buildings or on the wharves or platforms connected therewith, and further denies that said fire did not happen from any of the causes excepted in said policy.

VIII.

Answering unto the allegations of paragraph VIII of said complaint, defendant has no knowledge or information of the allegations therein contained sufficient to enable it to form a belief as to the truth thereof, and placing its denial on that ground, denies that plaintiff's net loss, or any loss, by reason of said fire

and destruction of said property, or by reason of said fire or the destruction of said property, was and is, or was or is, the full sum of one hundred and fifty-four thousand four hundred and seventy-seven and 7|100 (154,477.07) dollar, or any sum, or that said sum was and is, or was or is, the actual value of the property alleged to have been destroyed by fire as in said complaint set forth, or that said property had any actual, or any, value.

IX.

Answering the allegations of paragraph IX of said complaint, defendant denies that by reason of the said premises, or for any reason, or any premises, defendant became and is, liable, or became or is, liable, to pay to plaintiff on account of such loss, or any loss, the full amount of said policy, to-wit, $5000, or any sum whatsoever.

X.

Answering unto the allegations of paragraph X of said complaint, defendant denies that, in accordance with the provisions of said policy, and immediately subsequent to said loss, or in accordance with the provisions of said Policy, or immediately subsequent to said loss, or at any other time, plaintiff gave notice in writing, or otherwise, to the defendant, of said loss or any loss, within sixty (60) days after said fire, or at any other time, and on to-wit, the 30th day of September, 1910, or at any other time, plaintiff rendered a statement to defendant, signed and sworn to, or signed or sworn to, by a duly, or otherwise, authorized agent of Plaintiff, setting forth the time, the

origin of the fire, the value of the property and the amount of the loss thereon, and all other matters and things, or matters or things as by said policy required, or setting forth the time, or the origin of the fire, or the value of the property, or the amount of the loss thereon, or all, or any, other matters and things, or matters or things, as by said policy required, or otherwise; or that plaintiff has, in all respects, complied with the conditions of said policy on its part to be performed, or that, in accordance with the provisions of said policy and immediately subsequent to said loss, or in accordance with the provisions of said policy, or immediately subsequent to said loss, plaintiff gave notice in writing, or otherwise, to the defendant of the said loss, or any loss, within sixty (60) days after said fire, or any time, or on the 30th day of September, 1910, or at any other time plaintiff rendered a statement to defendant, signed and sworn to, or signed or sworn to, by a duly, or otherwise, authorized agent of plaintiff, setting forth the time, the origin of the fire, the value of the property and the amount of loss thereon, and all, or any, other matters and things, or matters or things as by said policy required, or otherwise, or setting forth the time, or the origin of the fire, or the value of the property, or the amount of loss thereon, or all, or any, other matters or things, or matters or things, as by said policy required, or otherwise, or that plaintiff has, in all respects, complied with the conditions of said policy on its part to be performed.

XI.

Defendant admits the allegations of paragraph XI of said complaint.

For a further and first affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

That it is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and duly and regularly admitted to do business in the State of Oregon, and has paid all fees and taxes due said State of Oregon.

II.

That heretofore, on or about the first day of May, 1910, in consideration of the payment to it of the premium of $125, defendant issued and delivered unto plaintiff its policy of insurance No. 550017, a copy of which is attached to this answer, marked Exhibit "A" to which reference is hereby made, and the same is hereby made a part of this first affirmative defense.

III.

That by the terms of said policy it was provided, among other things, that the entire policy, unless otherwise provided by agreement endorsed thereon or added thereto, should be void if the insured had then made or procured, or should thereafter make or procure, any other contract of insurance, whether valid or not, on poperty covered in whole or in part by said policy; that by endorsement upon said policy other concurrent insurance on said property was permitted,

IV.

That defendant is informed and believes and upon such information and belief alleges:

That plaintiff procured from Underwriters at Lloyds and from the St. Paul Fire and Marine Insurance Company, other insurance upon the salmon covered by defendant's policy of insurance; that said insurance issued by said Underwriters at Lloyds was marine insurance covering on said salmon from cannery on Bristol Bay to Pacific Coast, including fire risk from midnight of date of sealing of tins or barrels, at an agreed valuation of $4.50 per case, part of 48,500, a copy of which contract of insurance is attached to this answer, marked "Exhibit B," to which reference is hereby made, and the same is hereby made a part of this first affirmative defense:

That said insurance issued by said St. Paul Fire and Marine Insurance Company covered on said salmon in cases and or in barrels, from midnight of date on which tins and or barrels were sealed, until dispatched from the cannery, warehouse or dock, or upon the expiration of ninety (90) days from attachment of risk, whichever should first occur; said insurance was against the risk of fire only, in the following amount and upon the following terms, to-wit:

"It is understood and agreed that this cover attaches to salmon only as per face hereof, the amount of risk at the time of loss or otherwise to be determined in the following manner:

1st. Underwriters in London in the amount of L36,750, or $177,135, cover 177.135|250,000ths of the

gross value at $4.50 per case and $8.00 per barrel on all salmon on the cannery premises.

2nd. Underwriters in the amount of $27,500 as follows: Globe & Rutgers, $5,000; Svea, $7,000; Agricultural, $3,000; National Union, $7,500; St. Paul, $5,000; cover all supplies remaining ex "BERLIN" out of shipment in the amount of $76,009, season of 1910.

3rd. Such portions of policies of the Globe & Rutgers, $5,000; Svea, $7,000; Agricultural, $3,000; National Union, $7,500; St. Paul, $5,000; as are not required to cover supplies as per paragraph two, are to attach to salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel.

4th. After deducting the value of all salmon as would be covered by the intended interpretation of paragraphs one and three, from the gross value of all salmon on the cannery premises, the remainder of such value of salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel, shall be covered by this insurance, not exceeding the sum of $45,165, a copy of which contract of insurance is attached to this answer, marked Exhibit "C", to which reference is hereby made and which is hereby made a part of this first affirmative defense.

V.

That said other insurance procured by said plaintiff from said Underwriters at Lloyds, and said St. Paul Fire and Marine Insurance Company, was not concurrent insurance within the permission endorsed upon defendant's policy, and by reason thereof, defendant's said policy was voided.

And for a further and second affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

Defendant reiterates paragraphs I and II of the aforesaid first affirmative defense and said Exhibit "A" attached to this answer and hereby makes said paragraphs and said Exhibit "A" a part of this second affirmative defense with the same force and effect as though the same were set forth at length herein.

II.

That by the terms and conditions of said policy it was provided, among other things, that this company should not be liable for loss caused by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire.

III.

That defendant is informed and believes, and upon such information and belief alleges that plaintiff failed and neglected to use all reasonable diligence to save and preserve, after said fire, the property intended to be covered by defendant's policy of insurance, in that plaintiff's superintendent and manager, together with all of its employees numbering over one hundred (100) persons, departed, without necessity, from Nushagak and the scene of said fire within five (5) days after said fire, and left said salmon, coal and supplies, contained in the said cannery buildings and on said premises at the time of said fire, unexamined, unrecovered and unprotected, and exposed to the elements, whereas a large part of said salmon, coal and

supplies, in excess of the value of thirty-five thousand (35,000) dollars, could, by the exercise of reasonable care in recovering, protecting and reconditioning same, have been saved from such loss and damage.

IV.

That defendant is informed and believes, and upon such information and belief alleges that by reason of said neglect and failure, said loss and damage to said coal, supplies and salmon was increased to an amount in excess of twenty-five thousand (25,000) dollars, and in excess of the amount intended to be covered by defendant's policy of insurance.

For a further and third affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

Defendant reiterates paragraph I and II of the aforesaid first affirmative defense and said Exhibit "A" attached to this answer and hereby makes said paragraphs and said Exhibit "A" a part of this third affirmative defense with the same force and effect as though the same were set forth at length herein.

II.

That by the terms and conditions of said policy it was provided, among other things, that if fire should occur, the insured should give immediate notice of any loss thereby, in writing, to the defendant, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each

article and the amount claimed thereon; and within sixty (60) days after said fire, unless such time should be extended in writing by defendant, should render a statement to defendant, signed and sworn to by plaintiff, stating the knowledge and belief of plaintiff as to the time and origin of the fire; the cash value of each item thereof and the amount of loss thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all descriptions and schedules in all policies.

III.

That plaintiff did not give an immediate notice of any loss by said fire, in writing, to defendant, as by said policy required;

That defendant is informed and believes, and upon such information and belief alleges that plaintiff did not protect said property intended to be covered by defendant's policy of insurance from further damage, or forthwith separate the damaged and undamaged personal property, or put it into the best possible order, but defendant is informed and believes, and upon such information and belief alleges that plaintiff's superintendent and all of its employees numbering over one hundred (100) persons, departed from Nushagak, the scene of said fire, without necessity, within five (5) days after said fire, and left over twenty thousand (20,000) cases of said salmon, of a value in excess of thirty-five thousand (35,000) dollars, on the ground untouched, unexamined, unrecovered and unprotected, and exposed to the elements, and that thereby, damage to said salmon was increased in

amount in excess of twenty-five thousand (25,000) dollars.

That plaintiff did not make a complete inventory or any inventory, of said property intended to be covered by defendant's policy of insurance, stating the quantity and cost of each article, and the amount claimed thereon.

That plaintiff did not, within sixty (60) days after the fire, render a statement, signed and sworn to by plaintiff, stating the knowledge and belief of plaintiff as to the origin of said fire, but did, in its purported proofs of loss, swear that the cause of said fire was unknown and could not be ascertained, whereas defendant is informed and believes, and upon such information and belief alleges that said fire was caused by employees smoking in said cannery building.

That plaintiff did not, within sixty (60) days after said fire, render a statement to defendant, signed and sworn to by plaintiff, stating the cash value of each item of said property and the amount of loss thereon, except that it did file a sworn statement that no salmon remained sound, and that the metals which were in said fire could not be used in plaintiff's business, whereas defendant is informed and believes, and upon such information and belief alleges that over twenty thousand (20,000) cases of said salmon, exceeding in value the sum of thirty-five thousand (35,000) dollars, remained sound after said fire, and could have been, by the exercise of reasonable diligence, recovered; and that said metals were not destroyed, and could be used

by plaintiff in its cannery business by remelting the same.

Defendant further allegs that it is informed and believes, and upon such information and belief alleges that defendant procured from M. C. Harrison & Co., general agents of the St. Paul Fire and Marine Insurance Company, fire insurance on said salmon in the sum of two hundred and fifty thousand (250,000) dollars, and that said plaintiff did not file a statement signed and sworn to, stating said insurance covering on said property, or a copy of the descriptions and schedules contained therein.

For a further and fourth affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

Defendant reiterates paragraphs I and II of the aforesaid first affirmative defense and Exhibit "A" attached to this answer, and hereby makes said paragraphs and said Exhibit "A" a part of this fourth affirmative defense with the same force and effect as though the same were set forth at length herein.

II.

That by the terms and conditions of said policy, it was provided, among other things, that said entire policy should be void if the insured had concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning said insurance or the subject thereof.

III.

That plaintiff concealed from defendant herein the

fact that the other insurance which it intended to take out upon said property intended to be covered by defendant's policy of insurance, was marine insurance including the risk of fire, and not concurrent fire insurance.

That said plaintiff procured from said Underwriters at Lloyds, and said St. Paul Fire and Marine Insurance Company, marine insurance, including the risk of fire, copies of which contracts of insurance are attached to this answer, marked Exhibit "A", to which reference is hereby made, and the same are hereby made a part of this fourth affirmative defense.

That had said plaintiff informed defendant that it intended to procure said marine insurance, defendant would not have issued its policy of fire insurance, covering said property.

For a further and fifth affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

Defendant reiterates paragraphs I and II of the aforesaid first affirmative defense and Exhibit "A" attached to this answer, and hereby makes said paragraphs and said Exhibit "A" a part of this fifth affirmative defense with the same force and effect as though the same were set forth at length herein.

II.

That by the terms and conditions of said policy, it was provided, among other things, that said entire policy should be void in case of any fraud or false swearing by the insured, touching any matter relat-

ing to said insurance or the subject thereof, whether before or after loss.

III.

That touching the following matters relating to said insurance and the subject thereof, plaintiff falsely and fraudulently misrepresented to defendant:

(a). In its purported proofs of loss under date of September 30, 1910, that the total insurance, whether valid or not, on said property at the time of the fire, including defendant's policy, was $152,141.09, whereas defendant is informed and believes, and upon such information and belief alleges that said total insurance was the sum of $250,000;

(b). That a fire occurred on the 10th day of August, 1910, by which said property was destroyed by cause unknown, whereas defendant is informed and believes, and upon such information and belief alleges that said fire was known to plaintiff to have been caused by the smoking of employees in the cannery building;

(c). In its purported proofs of loss, under date of September 30, 1910, that the total sound value of supplies covered by said insurance was the sum of $21,659.09, whereas defendant is informed and believes, and upon such information and belief alleges that said total sound value did not exceed the sum of $14,000;

(d). In its purported proofs of loss under date of September 30, 1910, that said total loss and damage on said supplies was the sum of $21,659.09, whereas defendant is informed and believes, and upon such information and belief alleges that said total loss and

damage on said supplies did not exceed the sum of $10,000;

(e). In its purported proof of loss under date of September 30, 1910, that the total claim on said supplies under the policy of insurance thereon, was the sum of $21,659.09, whereas defendant is informed and believes, and upon such information and belief alleges that said claim, if any existed, did not exceed the sum of $10,000;

(f). In its purported proofs of loss under date of September 30, 1910, that the total sound value of said salmon covered by said insurance was the sum of $130,482, whereas defendant is informed and believes, and upon such information and belief alleges that the total sound value of said salmon at Nushagak did not exceed the sum of $100,000;

(g). In its purported proofs of loss under date of September 30, 1910, that the total loss and damage on said salmon was the sum of $125,610.44, whereas defendant is informed and believes, and upon such information and belief alleges that said total loss and damage on said salmon did not exceed the sum of $90,000;

(h). That the total insurance on said salmon was the sum of $130,482, whereas defendant is informed and believes, and upon such information and belief alleges that the same was $250,000;

(i). In its purported proofs of loss under date of September 30, 1910, that the total insurance claimed under the insurance on said salmon was the sum of $125,610.44, whereas defendant is informed and be-

lieves, and upon such information and belief alleges that said claim, if any, under said insurance, does not exceed the sum of $90,000;

(j). In its purported proofs of loss under date of September 30, 1910, that the total claim under defendant's policy was the sum of $4,960.36, whereas defendant alleges that no claim, in any amount whatsoever, existed under said policy;

(k). That the total value of property saved was the sum of $4,871.56, whereas defendant is informed and believes and upon such information and belief alleges that the total value of property not destroyed by said fire was the sum of $40,000;

(l). In its purported proofs of loss under date of September 30, 1910, that the building and all its contents of salmon, materials and supplies, together with the boiler and engine house, net house and their contents and wharf were burned and became a total loss, and that no salmon remained sound; and that there were burned in the cannery 28,996 cases of salmon, whereas defendant is informed and believes, and upon such information and belief alleges that there was not burned in said cannery building and remained sound, 20,000 cases of salmon, of a value in excess of the sum of $35,000, and 6,600 pounds of pig tin, 7,400 pounds of pig lead, 1,750 pounds of zinc, and 3 bars of copper;

(m). In its purported proofs of loss under date of September 30, 1910, that the aforesaid tin, lead, zinc and copper could not be used in plaintiff's business, whereas defendant is informed and believes, and upon

such information and belief alleges that said melted tin, lead, zinc and copper could be used in plaintiff's canning business;

(n). That it would have taken weeks of labor to have uncovered the metals that were in the fire, whereas defendant is informed and believes, and upon such information and belief alleges that said metals could have been recovered by the exercise of ordinary care and diligence within a reasonable time after said loss, and that plaintiff's superintendent and employees had ample time to effect such recovery, but failed and neglected so to do.

(o). That plaintiff's superintendent and manager of its cannery at Nushagak made such examination of property covered by defendant's policy of insurance as circumstances permitted, whereas defendant is informed and believes, and upon such information and belief alleges that plaintiff's superintendent and its employees numbering over 100 persons, could have remained at Nushagak for at least 30 days after said fire, and could, by the exercise of reasonable diligence, have recovered the aforesaid tin, lead, zinc and copper and over 20,000 cases of said salmon, and could, by the exercise of reasonable diligence, have saved from said fire at least 50 of the 100 tons of coal alleged to have been burned, but that plaintiff's superintendent and employes unnecessarily abandoned said property and left the scene of said fire, without necessity, within five days thereafter;

(p). That the freight, cartage, wharfage, lighterage on, and costing of putting said supplies in the

cannery, including marine insurance on said supplies alleged to have been burned, was the sum of $7,500.54, whereas defendant is informed and believes, and upon such information and belief alleges that said freight, cartage, wharfage, literage, cost of putting said supplies in the cannery and cost of marine insurance upon the same, would not exceed the sum of $2,000;

(q). In its purported proofs of loss under date of September 30, 1910, that 105,504 sanitary cans were part of the supplies intended for use by plaintiff in its business, and were of the value of $1,740.81, whereas defendant is informed and believes, and upon such information and belief alleges that said sanitary cans were valueless and could not be used by plaintiff in its said salmon-canning business;

(r). In its purported proofs of loss under date of September 30, 1910, that the value of its fishing nets and lines was the sum of $2,384.59, whereas defendant is informed and believes, and upon such information and belief alleges that the same did not exceed in value the sum of $2,230.75.

IV.

That by reason of each and every of the aforesaid false and fraudulent statements and misrepresentations, defendant's policy has been voided.

And for a further and sixth affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

Defendant reiterates paragraphs I and II of the aforesaid first affirmative defense and said Exhibit

"A" attached to this answer and hereby makes said paragraphs and said Exhibit "A" a part of this sixth affirmative defense with the same force and effect as though the same were set forth at length herein.

II.

That by the terms and conditions of said policy it was provided, among other things, that defendant company should not be liable beyond the actual cash value of the property at the time any loss or damage occurred, and the loss or damage should be ascertained or estimated according to such actual cash value, with proper deduction for depreciation, however caused, and should in no event exceed what it would then cost defendant to repair or replace the same with material of like kind and quality.

III.

That defendant is informed and believes, and upon such information and belief alleges that the actual cash value of the supplies intended to be covered by defendant's policy of insurance, and actually burned and destroyed, and the cost of replacing the same with material of like kind and quality would not exceed the sum of $10,000.

For further and seventh affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

Defendant reiterates paragraphs I and II of the aforesaid first affirmative defense and said Exhibit "A" attached to this answer and hereby makes said paragraphs and said Exhibit "A" a part of this sev-

enth affirmative defense with the same force and effect as though the same were set forth at length herein.

II.

That by the terms and conditions of said policy it was provided, among other things, that in the event of disagreement as to the amount of loss, the same should, as above provided, be ascertained by two competent and disinterested appraisers, plaintiff and defendant each selecting one, and the two so chosen should then select a competent and disinterested umpire; the appraisers then should estimate and appraise the loss, setting forth separately sound value and damage, and failing to agree, should submit their differences to the umpire; and the award in writing of any two should determine the amount of such loss; the parties thereto should pay the appraiser respectively selected by them, and should bear equally the expenses of the appraisal and umpire.

III.

That plaintiff and defendant could not agree upon the loss for which, if any, liability existed under defendant's policy, and thereupon, on or about the 5th day of January, 1911, defendant designated E. J. Jolly as its appraiser, and requested plaintiff to name its appraiser as required by the aforesaid conditions of said policy, for the purpose of making an appraisal of the amount of said loss, if any, under said policy; that plaintiff failed and refused, and has ever since failed and refused to name said appraiser, or to enter into said appraisement as by said policy required.

For a further and eighth affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

Defendant reiterates paragraphs I and II of the aforesaid first affirmative defense and said Exhibit "A" attached to this answer and hereby makes said paragraphs and said Exhibit "A" a part of this eighth affirmative defense, with the same force and effect as though the same were set forth at length herein.

II.

That it was by said policy

"warranted by the assured that no tarring or "oiling of nets be allowed within the cannery "building, nor nets kept in the cannery build- "ing after such tarring or oiling is done, until "after such nets have been used at least dur- "ing one fishing season. All nets kept in can- "nery building to be hung on racks or sus- "pended from the ceiling."

III.

That defendant is informed and believes, and upon such information and belief alleges that said warranty was broken by plaintiff in that nets which had not been used at least during one fishing season were kept in said cannery building.

IV.

That by reason thereof, said policy was voided.

For a further and ninth affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

Defendant reiterates paragraphs I and II of the aforesaid first affirmative defense and said Exhibit "A" attached to this answer and hereby makes said paragraphs and said Exhibit "A" a part of this ninth affirmative defense, with the same force and effect as though the same were set forth at length herein.

II.

That by the terms and conditions of said policy, it was provided, among other things, that its entire policy, unless otherwise provided by agreement endorsed thereon or added thereto, should be void if there be kept, used or allowed on the premises described in said policy, benzine, benzole, dynamite, ether, fireworks, gasoline, Greek fire, gun powder exceeding 25 pounds in quantity, naphtha, nitro-glycerine, or other explosives, phosphorus or petroleum, or any of its products of greater inflammability than kerosene oil of the United States standard.

That said policy further, by endorsement thereon, granted permission to do lacquering in and on said described premises, and said policy further contained the following warranty:

> "warranted by the assured that no more than
> "one day's supply of lacquer, benzine, naph-
> "tha or other product of petroleum, except
> "refined kerosene oil, shall be kept in or tak-
> en into the main cannery building, or other
> "buildings within fifty (50) feet thereof, at
> "any one time; that artificial lights, except
> "electric lights, shall not be used in the build-

"ing where the lacquering is being done;
"and that smoking or the use of open lights
"on the premises shall not be allowed."

III.

That defendant is informed and believes, and upon such information and belief alleges that said warranty was broken by plaintiff in that more than one day's supply of lacquer, benzine, naphtha and other products of petroleum were taken into the main cannery building, and other buildings within fifty (50) feet thereof, at one time, and that artificial lights were used in the building where said lacquering was done; and that smoking by plaintiff's employees was allowed on said premises.

IV.

That by reason of the foregoing facts, said warranty was broken and defendant's policy voided.

And for a further and tenth affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

Defendant reiterates paragraphs I and II of the aforesaid first affirmative defense and said Exhibit "A" attached to this answer and hereby makes said paragraphs and said Exhibit "A" a part of this second affirmative defense with the same force and effect as though the same were set forth at length herein.

II.

That defendant is informed and believes, and upon such information and belief alleges that defendant has been paid by said St. Paul Fire and Marine Insurance

Company and said Underwriters at Lloyds, the sum of $124,947.95 on said salmon and supplies intended to be covered by defendant's policy, which payment of said sum defendant is informed and believes, and upon such information and belief alleges fully indemnifies plaintiff for the loss suffered by it on said salmon and supplies by reason of said fire.

III.

That by reason of the said full and complete indemnity, defendant is not liable unto plaintiff on its said policy of insurance.

And for a further and eleventh affirmative defense to the cause of action alleged in the complaint herein, defendant alleges:

I.

Defendant reiterates paragraphs I and II of the aforesaid first affirmative defense and said Exhibit "A" attached to this answer and hereby makes said paragraphs and said Exhibit "A" a part of this eleventh affirmative defense with the same force and effect as though the same were set forth at length herein.

II.

That by the terms and conditions of said policy it was provided, among other things, that no suit or action on this policy for the recovery of any claim should be sustainable in any court of law or equity until after full compliance by the assured with all the requirements set forth in said policy.

III.

Defendant reiterates each and every of the allegations contained in the first, second, third, seventh, and

eighth affirmative defenses herein, and makes the same a part of this eleventh affirmative defense with the same force and effect as though the same had been set forth herein at length.

IV.

That by reason of the failure of plaintiff to fully comply with all the requirements of said policy as set forth in said first, second, third, seventh and eighth affirmative defenses herein, the action herein is premature and not sustainable, as by said condition provided.

WHEREFORE, defendant prays that the above-entitled action may be dismissed, with costs, and defendant may have such other and further relief as may be deemed meet and equitable in the premises.

GLOBE & RUTGERS FIRE INSURANCE CO.,
By Edward Brown & Sons, its General Agent.
PAGE, McCUTCHEN, KNIGHT & OLNEY,
DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Defendant.

STATE OF CALIFORNIA,
City and County of San Francisco—ss.

HERBERT BROWN, being first duly sworn, on oath deposes and says:

That he is a member of the firm of Edward Brown & Sons, general agents for the Globe & Rutgers Fire Insurance Company, a corporation, the above named defendant; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

HERBERT BROWN.

Subscribed and sworn to before me this 19th day of July, A. D., 1911.

[Notarial Seal.] FRANK L. OWEN,

Notary Public, in and for the City and County of San Francisco, State of California.

[Exhibit "A."]

No. 550017. $5,000.00

THE

GLOBE AND RUTGERS FIRE INSURANCE COMPANY

Incorporated.

OF THE CITY OF NEW YORK

Cash Capital $400,000.00

In Consideration of the Stipulaeions herein named and of OneTwenty-five Dollars Premium Does insure Alaska Portland Packers Association for the term of one year from the 1st day of May, 1910, at noon, to the 1st day of May, 1911, at noon.

Against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding Five Thousand Dollars, to the following described property while located and contained as described herein, and not elsewhere, to wit:

ALASKA PORTLAND PACKERS ASSOCIATION.

Stock in Cannery.

$5,000—On tin, tin cans, manufactured and in process of manufacture and on materials for making and finishing same; on salmon pickled, frozen and or canned, packed and in process

of packing; on nets, rope, web, ice, twine, thread, salt, sugar, paper, lead, corks and lines, barrels, packing boxes, and labels and on all other products, materials and supplies incident to the canning, packing, freezing and pickling of, salmon; All while contained in the frame building additions, sheds adjoining and communicating, occupied as a salmon cannery, and situate at Nushagak, Bristol Bay, Alaska, and or on the wharves and platforms connected therewith.

Permission is hereby granted to run overtime and at night, or cease operation entirely as the interest of the assured may demand and to make additional alterations and repairs without notice to this company.

Permission granted to do lacquering in and on the premises, it being warranted by the assured that no more than one day's supply of lacquer, benzine, naphtha or other product of petroleum, except refined kerosene oil, shall be kept in or taken into the main cannery building, or other building with in fifty (50) feet thereof, at any one time; that artificial lights, except electric lights, shall not be used in the building where the lacquering is being done; and that smoking or the use of open lights on the premises shall not be allowed.

In event of loss, the assured to furnish one adjuster for all Companies concerned (should they elect to send one), transportation and subsistence, or cost of same, from Seattle to and at the assured's premises and return.

It is understood and agreed that the value of a case of salmon is $4.50 and that 48 one pound tins shall be taken as a case whether lacquered, labeled and or cased or not, but in case of loss before being lacquered, labeled and or cased, the cost of material for lacquering, labeling and or casing shall be deducted from said value in ascertaining amount of loss.

Warranted by the assured that no tarring or oiling of nets, be allowed within the cannery building, nor nets kept in the cannery building after such tarring or oiling is done until after such nets have been used at least during one fishing season, All nets in cannery building to be hung on racks or suspended from the ceiling.

WATCHMAN CLAUSE: It is understood and agreed that during the packing season a watch shall be employed by the assured to be in and upon the premises every night and that when the packing season is over, one man shall be left on the premises, who shall have charge of same, and who shall reside in or near the above described premises;

It is understood that the within described cannery is known as the Alaska Portland Packers Association's Cannery.

Other CONCURRENT INSURANCE PERMITTED.

The liability of this company for loss or damage to the property insured shall commence only upon the landing of same upon the cannery premises from the "Ship" Berlin" and shall cease when the loading of the finished product upon the vessel is completed

for shipment at end of season unless this policy be transferred to cover at another place.

Attached to and made part of Policy No. .....

Issued by .....

To the Alaska Portland Packers' Association.

San Francisco, July 19th, 1910.

Endorsement to policy No. 550017 issued by Globe & Rutgers Fire Ins. Co., to Messrs. Alaska Portland Packers' Association.

$5,000.00.

In accordance with new special rate, the rate on the above policy is hereby reduced to 2 per cent from July 5th, 1910.

Return Premium, $20.85.

This policy is made and accepted subject to the following stipulations and conditions, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement endorsed hereon or added hereto, and as to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

In Witness Whereof, this company has executed and attested these presents this 28th day of April, 1910.

This policy shall not be valid until countersigned by the duly authorized Agent at San Francisco, Cal.

E. C. JAMESON,
President.

LYMON CANDEE,
Secretary.

Countersigned Edward Brown & Sons, Gen. Agents.

CONDITIONS REFERRED TO IN BODY OF CONTRACT.

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however,

with this company, to take all or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild or replace the property lost or damaged with other of like kind and quantity within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of the intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein, or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy, or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering, or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the

subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants, without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vaper be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above described premises, benzine, benzol, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine, or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may used for lights and kept for sale according to law, but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building, or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property, held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulation, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured, or by the company by giving five days notice of such cancellation. If this policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the pro rata premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and coditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new location; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other in-

surance, whether valid or not, covering any of said property, and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, locations, possession or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts therof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery, destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor, or othewise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the in-

sured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire, the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for

re-insurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached or appended hereto.

Provisions required by law to be stated in this policy:—This policy is a policy in a stock corporation and is issued under and in pursuance of Sections 130, 131 and 132, of the Insurance Laws of the State of New York.

This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements, or conditions as may be indorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be subject of agreement indorsed hereon or added hereto, and, as to such provisions and conditions, no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions, unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

EXHIBIT B.

London, May 9, 1910.

This is to certify that insurance has been opened with the undersigned underwriters and that policies will be put forward as interest may appear per "Berlin" on Salmon warranted free from particular average unless the vessel be stranded, sunk, burnt, on fire or in collision, etc., from Cannery on Bristol Bay to Pacific Coast, at 2½ per cent. interest on deck held covered at double premium. Including fire risk from midnight of date of sealing of tins or barrels at one eighth per cent. per month, but not exceeding 90 days. Part of $250,000, warranted free from capture, seizure and detention and the consequence of any attempt

thereat, piracy and barratry excepted and other consequences of hostilities.

Signature underwriters in London, L36750; later endorsed to read: Part of L48500; value $4.50 per case. Insurance on risk in Cannery in London, under above cover $98,015.

EXHIBIT C.

San Francisco Cal. Portland, Ore. Seattle, Wash.

Office of M. C. HARRISON & CO.

To St. Paul Fire & Marine Insurance Co.

Open Insurance is wanted by Alaska Portland Packers' Association for account of themselves—loss, if any payable to order in San Francisco for not to exceed $45,165. on salmon in cases and or barrels.

Valued at $4.50 per case, $8.00 per barrel.

Shipped or to be shipped on board the Ship "BERLIN."

Sailing not later than Oct. 15th, 1910.

And to be insured from midnight of day on which tins and or barrels are sealed until dispatched from the cannery warehouse or dock, or upon the expiration of 90 days from attachment of risk, whichever shall first occur, free from partial loss and particular average.

Insured against the risk of fire only, in amount and upon terms as per back hereof.

Binding in accordance with the terms and condi-

tions expressed in the Policy to be issued hereunder.
Vessel rated ..... Tonnage, net .....
Built .....

$45,165 @ 1 per cent. $.....
$..... @....per cent. $.....

Total, ...$.....
Less .....$.....

$.....

ALASKA PORTLAND PACKERS' ASSN.,
Frank M. Warren, Prest.
Applicant.

Accepted,
ST. PAUL FIRE & MARINE INSURANCE CO.
M. C. Harrison & Co.
San Francisco, May 15th, 1910.

(ENDORSED:)

It is understood and agreed that this cover attaches to salmon only as per face hereof, the amount of risk at the time of loss or otherwise to be determined in the following manner;

1st. Underwriters in London in the amount of L36,750—$177,135, cover 177,135|250,000ths of the gross value at $4.50 per case and $8.00 per barrel on all salmon on the cannery premises.

2nd. Underwriters in the amount of $27,500 as follows: Globe & Rutgers, $5,000; Svea, $7,000; Agricultural, $3,000; National Union, $7,500; St. Paul, $5,000; cover all supplies remaining ex "BERLIN"

out of shipment in the amount of $76,009, season of 1910.

3rd. Such portion of policies of the Globe & Rutgers, $5,000; Svea, $7,000; Agricultural, $3,000; National Union $7,500; St. Paul, $5,000, as are not required to cover supplies as per paragraph two, are to attach to salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel.

4th. After deducting the value of all salmon as would be covered by the intended interpretation of paragraphs one and three, from the gross value of all salmon on the cannery premises, the remainder of such value of salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel, shall be covered by this insurance, not exceeding the sum of $45,165.

ST. PAUL FIRE & MARINE INS. CO.,

M. C. H. & CO.

[Endorsed]: Answer. Filed July 21, 1911.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 16 day of October, 1911, there was duly filed in said Court, a Reply in words and figures as follows to wit:

[Reply.]

In the Circuit Court of the United States, for the District of Oregon.

ALASKA PORTLAND PACKERS' ASSOCIATION,

Plaintiff.

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

The plaintiff, for a reply to the further and first affirmative defense to the complaint of the plaintiff, admits, denies and alleges as follows:

I.

Admits the allegations in paragraphs I, II, III and IV of said first affirmative defense.

II.

For reply to paragraph V of said first affirmative defense, the plaintiff denies each and every allegation therein contained.

And for a further and first affirmative reply to the said first affirmative defense, this plaintiff alleges:

I.

That the defendant ought not to be admitted to allege that other insurance upon the salmon covered by defendant's policy of insurance procured by the plaintiff from Underwriters at Lloyds, and from the St. Paul Fire and Marine Insurance Company, as described in said paragraphs IV and V of said first affirmative defense, or any thereof, was not "other concurrent insurance" within the meaning and intent of that expression as used in the policy of insurance issued by the defendant to the plaintiff, or that said insurance procured by said plaintiff from said Underwriters at Lloyds or from said St. Paul Fire and Marine Insurance Company, was not concurrent insurance within the permission endorsed upon de-

fendant's policy issued to plaintiff, or that by reason thereof defendant's said policy was void.

FOR THAT, said insurance procured by plaintiff from said Underwriters at Lloyds, and from said St. Paul Fire and Marine Insurance Company was so procured by the plaintiff with the full knowledge and consent of the defendant as insurance concurrent with the insurance under defendant's said policy, and when defedant's said policy was issued to plaintiff, and when the words "other concurrent insurance permitted", and all other words having reference thereto, were used in said policy, they were so insured and used by defendant for the express purpose of enabling the plaintiff to procure, and with the understanding that the plaintiff would procure, the said additional insurance from said Underwriters at Lloyds, and from said St. Paul Fire and Marine Insurance Company described in said answer, and the defendant accepted and receipted for the premium mentioned in the complaint and answer herein, and delivered its policy of insurance to this plaintiff with notice to the defendant that the insurance so given was a part of the insurance to be placed upon the property covered by defendant's policy, and with full knowledge, and with the understanding had between plaintiff and defendant, that the plaintiff intended to, and would, procure the other insurance described in said answer.

That by reason of the facts hereinabove set forth the defendant is estopped to allege or show that the said additional insurance on plaintiff's property so procured was not other concurrent insurance within

the intent and meaning of defendant's said policy, or that by reason thereof, the defendant's said policy was void.

And for further and second affirmative reply to the said first separate affirmative answer and defense, this plaintiff alleges:

I.

That defendant ought not be admitted to allege that other insurance upon the salmon covered by defendant's policy of insurance procured by the plaintiff from Underwriters at Lloyds, and from the St. Paul Fire and Marine Insurance Company, as described in said paragraphs IV and V of said first affirmative defense was not "other concurrent insurance" within the meaning and intent of that expression as used in the policy of insurance issued by the defendant to the plaintiff, or that said insurance issued by the defendant to the plaintiff, or that said insurance procured by said plaintiff from said Underwriters at Lloyds, or from said St. Paul Fire and Marine Insurance Company, was not concurrent within the permission endorsed upon defendant's policy issued to plaintiff, or that by reason thereof defendant's said policy was void.

FOR THAT, after the destruction of the property of the plaintiff by fire, as in the complaint alleged, the plaintiff, in compliance with the terms and conditions of defendant's policy, gave to the defendant in writing immediate notice of the said loss, and within the time prescribed by defendant's said policy, rendered to defendant, as by the terms of its policy provided,

a statement signed and sworn to by a duly authorized agent of the plaintiff, setting forth, among other things, the time and origin of the fire, the interest of the plaintiff in the said property, the cash value of each item thereof, and the amount of loss thereon, all other insurance on said property, together with a copy of all the descriptions and schedules in all policies, including the said insurance procured by plaintiff from said Underwriters at Lloyds and from the said St. Paul Fire and Marine Insurance Company, mentioned in said answer, and in all respects complied with the terms and conditions of the defendant's said policy; and the plaintiff delivered copies of said last named policies to defendant, and the defendant thereupon claimed that by the terms of its policy it was not liable for a greater portion of the loss than the amount insured by defendant's said policy bore to the whole insurance covering said property, and in so doing, considered and treated the whole amount of insurance on said property, including the said insurance in said Lloyds and St. Paul Fire and Marine Insurance Company policies, as valid and subsisting insurance on said property; and the defendant then and there claimed to adjust the plaintiff's loss under said defendant's policy and rendered and delivered to the plaintiff certain communications and documents, executed by it and containing the reports of defendant's adjuster, made and executed for and on behalf of the defendant by defendant's duly authorized agent, which said communications and documents were so

delivered to the plaintiff at or about the dates thereof, substantial copies of which are attached to this reply, marked respectively "Exhibits A, B and C", and are made a part and parcel hereof, and the plaintiff asks leave to have the benefit of the same as a part of its reply as fully as though set out herein.

That, as requested by the defendant in said communication marked "Exhibit A", and hereto attached, the plaintiff submitted to an examination under oath as to its loss, and all matters and things in connection therewith, and thereafter the defendant called a meeting of the general agents and managers of all insurance companies in interest, at San Francisco, California ,submitted to the plaintiff certain forms of affidavits touching the said insurance and defendant's policy, all of which were satisfactorily made by the plaintiff, at defendant's request, and thereafter and on the dates thereof, the said defendant submitted to the plaintiff the documents designated as "Exhibits B and C", and at all times after the said fire, and up to the time of the answer in this behalf, the defendant, by means of said documents, and in other ways, recognized and ratified the said insurance under its said policy, as well as that obtained by the plaintiff from the said Underwriters at Lloyds, and from the St. Paul Fire and Marine Insurance Company.

That by reason of the facts hereinabove set forth the defendant is estopped to allege or show that the said additional insurance on plaintiff's property so procured was not other concurrent insurance within the intent and meaning of defendant's policy, or that

by reason thereof the defendant's said policy was void.

And for a reply to the further and second affirmative defense to the cause of action alleged in the complaint, this defendant denies each and every allegation in said further and second affirmative defense contained, except that, the plaintiff admits that the defendant is a corporation, and as such, issued and delivered to the plaintiff for the premium therein stated, its policy of insurance, as alleged in the said further and second affirmative defense, and plaintiff also admits that by the terms and conditions of said policy, it was provided, among other things, that the defendant should not be liable for loss caused by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire.

For a reply to the further and third affirmative defense to the cause of action alleged in the complaint, the plaintiff denies each and every allegation contained in said further and third affirmative defense, except that the plaintiff admits that the defendant is a corporation, and that on or about the first day of May, 1910, in consideration of the premium therein stated, the defendant issued and delivered unto the plaintiff its policy of insurance described in said further and third affirmative defense, and that by the terms and conditions of said policy it was provided, among other things, that if fire should occur, the insured should give immediate notice of any loss thereby, in writing, to the defendant, protect the property from further damage, forthwith separate the damaged and

undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and within sixty (60) days after said fire, unless such time should be extended in writing by defendant, should render a statement to defendant, signed and sworn to by plaintiff, stating the knowledge and belief of plaintiff as to the time and origin of the fire; the cash value of each item thereof and the amount of loss theron; all other insurance, whether valid or not, covering any of said property; and a copy of all descriptions and schedules in all policies.

And for a further and separate affirmative reply to the third affirmative answer and defense, the plaintiff alleges that the defendant ought not to be admitted to allege that the plaintiff did not comply with the terms and conditions of the said policy issued by the defendant to the plaintiff, as in said third affirmative defense alleged,

FOR THAT, after said fire, the plaintiff gave to the defendant immediate notice in writing of the loss by said fire, as by said policy required, and protected said property covered by defendant's said policy of insurance from further damage, and separated the damaged and undamaged personal property, as far as it was possible to do so, and put it into the best possible order, and made and furnished to defendant a complete inventory of the property covered by defendant's policy of insurance, stating the quantity and cost of each article, and the amount claimed thereon, and

within sixty (60) days after the fire, rendered to defendant statements signed and sworn to by the plaintiff stating the knowledge and belief of plaintiff as to the time and origin of said fire, and stating that plaintiff was the sole owner of the property, and that same was unincumbered, and stating the cash value of each item of said property and the amount of loss thereon, the other insurance, whether valid or not, covering the said property, and a copy of all descriptions and schedules in all policies, and all other particulars required by the terms and conditions of defendant's said policy; and that the defendant thereupon accepted and received said notice of loss, sworn statements and proofs of loss, without any notice to plaintiff that defendant intended to, or would, claim that the defendant's policy had been voided, or that the plaintiff had in any manner failed to comply with any of the terms or conditions of said policy, or that the defendant proposed to rely on any violation of any of the terms of said policy, and the defendant thereupon, with full knowledge of the facts, waived the right to insist that the terms and conditions of said policy had not been complied with in the particulars set forth in said further and third affirmative defense, or in any manner, by urging and inducing plaintiff at considerable trouble and expense to it, to prepare and forward to the defendant additional proofs of loss, and to incur other expense and trouble in and about the same, and by proceeding to adjust the plaintiff's loss under said defendant's policy and by entering into negotiations with the plaintiff towards a settle-

ment of its claim against defendant on account of said insurance, and by requiring the plaintiff to submit to an examination under oath by the duly authorized agent of the defendant, and to subscribe the same, and to produce for examination all its books of account, bills, invoices and vouchers and certified copies thereof at a place designated by the plaintiff, and requiring plaintiff to permit the defendant to make extracts and copies thereof, and the defendant did thereupon and thereafter further waive its right to claim that the terms and conditions of said policy had not been complied with by plaintiff, and did call a meeting of the general agents and managers of all fire insurance companies in interest, at San Francisco, California, for the purpose of adjusting the loss and apportioning the amount defendant was liable to pay under its said policy, and did submit to the plaintiff certain affidavits touching the said insurance and defendant's policy, all of which affidavits were made by the plaintiff in a manner satisfactory to the defendant; and that the defendant did otherwise admit the validity of defendant's said policy of insurance, making no objection to paying its loss under same, but disputing its proportion of the liability to be shared among the several insurance companies liable upon said loss, and thereby induced plaintiff to believe that defendant had no objection to paying the loss suffered by the plaintiff, and induced the plaintiff to believe that the only difference between the plaintiff and the defendant was as to the proportion of the loss which the defendant ought to pay; and the defendant

thereafter ascertained and submitted to plaintiff a statement of the amount which it claimed it ought to so pay, and attempted to award the said amount to the plaintiff, and to induce plaintiff to accept same, in compensation for its loss under said policy, and at no time prior to or after said fire, or up to the time of filing the answer in this behalf, did the plaintiff claim that it was not liable to pay to the plaintiff its portion of the said loss incurred on account of said fire, nor did defendant ever in any manner suggest or claim to the plaintiff that the plaintiff had in any manner failed to comply with the terms or conditions of said defendant's policy of insurance, or the particular terms and conditions, or any of them, described in said further and third affirmative defense to the plaintiff's complaint.

And the plaintiff further alleges that the defendant's apportionment of the amount defendant so claimed it was liable for and ought to pay on account of said loss, was based upon the total amount of insurance defendant claimed should share in the loss, including the amount of insurance procured by plaintiff from said Underwriters at Lloyds and from said St. Paul Fire and Marine Insurance Company and described in said answer.

That by reason of the facts hereinabove set forth the defendant is estopped and has waived the right to allege or show that the plaintiff did not comply with the terms or conditions, or any of them, in the said policy issued by the defendant to the plaintiff.

For a reply to the further and fourth affirmative

defense to the cause of action alleged in the complaint, the plaintiff denies each and every allegation in said fourth affirmative defense contained, except that the plaintiff admits that the defendant is a corporation, and for the premium therein specified, issued and delivered to the plaintiff the policy of insurance described in said further and fourth affirmative defense, and that by the terms and conditions of said policy it was provided, among other things, that said entire policy should be void if the insured had concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning said insurance, or the subject thereof.

And for a further and first affirmative reply to the said further and fourth affirmative defense, this plaintiff alleges:

I.

That the defendant ought not to be permitted to allege or show that the plaintiff concealed from it the fact that other insurance which plaintiff intended to take upon its said property intended to be covered by defendant's policy of insurance, was marine insurance including the risk of fire, and not concurrent fire insurance, or that the plaintiff procured from said Underwriters at Lloyds and said St. Paul Fire and Marine Insurance Company marine insurance including the risk of fire, or had the plaintiff informed defendant that plaintiff intended to procure said marine insurance the defendant would not have issued its policy of fire insurance covering said property.

FOR THAT, said insurance procured by plaintiff

from said Underwriters at Lloyds and from said St. Paul Fire and Marine Insurance Company was so procured by the plaintiff with the full knowledge and consent of the defendant as insurance concurrent with the insurance under said defendant's said policy, and when the said policy of insurance was issued to the plaintiff, it was so issued with the express understanding that defendant would procure the said additional insurance from said Underwriters at Lloyds and from said St. Paul Fire and Marine Insurance Company described in said answer, and the defendant accepted and receipted for the premium mentioned in the complaint and answer herein and delivered its policy of insurance to the plaintiff with notice to the defendant that the insurance so given was a part of the insurance to be placed upon the property covered by defendant's policy, and with full notice, and with the understanding had between plaintiff and defendant that the plaintiff intended to, and would procure the other insurance described in said answer from said Underwriters at Lloyds and said St. Paul Fire and Marine Insurance Company.

That the plaintiff did inform defendant that it intended to procure said additional insurance.

That by reason of the facts hereinabove set forth the defendant is estopped to allege or show that the said other insurance is not other concurrent insurance, or that plaintiff concealed the fact that the insurance which it intended to take was marine insurance, including the risk of fire, and not concurrent fire insurance, and that if the plaintiff had been informed

that the defendant intended to procure said additional insurance, defendant would not have issued its policy covering said property.

For a further and second affirmative reply to the said fourth affairmative defense, the plaintiff reiterates the affirmative allegations pleaded by the plaintiff in its further and separate affirmative reply to the third affirmative defense to the complaint of the plaintiff, and hereby makes said affirmative allegations a part of this portion of the reply to the said fourth further affirmative defense with the same force and effect as though the same were set forth at length herein.

For a reply to the further and fifth affirmative defense, this plaintiff denies each and every allegation therein contained, except that the plaintiff admits that the defendant is a corporation, and, as such, issued and delivered to plaintiff, for the premium therein stated, its policy of insurance, as alleged in said further and fifth affirmative defense; and admits that the said policy contained the terms and conditions as alleged; and except that the plaintiff admits that it did make the representations and claims set out therein, but deines that the same, or any thereof, were or are false or fraudulent, and the plaintiff further alleges:

That after making and filing with the defendant its proofs of loss, dated September 30, 1910, in which the plaintiff stated that the sound value of plaintiff's supplies covered by insurance was $21,659.09, and that the total loss and damage to the same amounted to

the same sum; the plaintiff amended said proofs of loss by filing with the defendant a supplemental and additional statement, covering certain items affecting the value of the supplies, which increased the plaintiff's claim of the sound value of supplies to $29,-159.63, and the loss and damage to the same in like amount and value.

The plaintiff, for a reply to the further and sixth affirmative defense to the complaint, denies each and every allegation in said sixth affirmative defense contained, except that the plaintiff admits that the defendant is a corporation, and that on the first day of May, 1910, defendant, for the premium stated in said affirmative defense, issued and delivered to the plaintiff the policy of insurance, and that by the terms of said policy it was provided, among other things, that defendant company should not be liable beyond the actual cash value of the property at the time any loss or damage occurred, and the loss or damage should be ascertained or estimated according to such actual cash value, with proper deduction for depreciation, however caused, and should in no event exceed what it would then cost defendant to repair or replace the same with material of like kind and quality.

The plaintiff, for a reply to the further and seventh affirmative defense to the complaint of the plaintiff, denies each and every allegation in said seventh affirmative defense contained, except that the plaintiff admits that the defendant is a corporation, and that on said first day of May, 1910, defendant, for the premium stated in said affirmative defense, issued and

delivered to the plaintiff the policy of insurance described in said defense, and that by the terms and conditions of said policy it was provided, among other things, that in the event of disagreement as to the amount of loss, the same should, as above provided, be ascertained by two competent and disinterested appraisers, plaintiff and defendant each selecting one, and the two so chosen should then select a competent and disinterested umpire; the appraisers should then estimate and appraise the loss, setting forth separately sound value and damage, and failing to agree, should submit their differences to the umpire; and the award in writing of any two should determine the amount of such loss; the parties thereto should pay the appraiser respectively selected by them, and should bear equally the expenses of the appraisal and umpire.

And for a further and separate reply to the further and seventh affirmative defense this plaintiff alleges:

I.

That the defendant ought not to be admitted to allege that on or about the 5th day of January, 1911, or at any time, the defendant designated E. J. Jolly as its appraiser, or requested plaintiff to name its appraiser, as required by the conditions of the policy, or for the purpose of making an appraisal of the amount of said loss in said policy, or that the plaintiff failed or refused to name said appraiser, or to enter into an appraisement, as by the policy required.

FOR THAT, on to-wit, the 6th day of October, 1910, the defendant, not having paid to the plaintiff

the amount which the defendant was, by the terms of its policy, liable to pay on account of the loss of the plaintiff's property by the fire described in the complaint and answer herein, the plaintiff demanded of the defendant that the amount of the loss under defendant's policy be ascertained by two competent and disinterested appraisers, and the plaintiff selected one J. P. Treanor as its appraiser, who was a competent and disinterested appraiser, and notified the defendant thereof, and requested that the defendant name its appraiser so that the two appraisers so selected might then select a competent and disinterested umpire, and might esimate and appraise the loss, as required by the terms of said policy, but the defendant wholly failed and refused to comply with the said demand of the plaintiff, or to select or name its appraiser, and the defendant never thereafter demanded an appraisement within a reasonable time or within the time or manner provided by the terms of said policy, but, on the contrary, the defendant did not at any time until the said 5th day of January, 1911, attempt to name any appraiser whatsoever, at which date the said right to any appraisal of the amount of said loss had been waived by the defendant. That the only appariser then selected or designated by the said defendant was one E. J. Jolly, who was a paid employe of the defendant, and who was not a disinterested person, as provided by the terms of said policy, but who had been and was then acting as the adjuster for the defendant of the loss of the plaintiff and had made and executed for and on behalf of the defendant the doc-

uments designated in this reply as the "adjuster's report", being a part of the exhibits "A", "B" and "C" attached to the first affirmative reply to the first affirmative defense, reference to which is hereby made, and the same are in all respects made a part and parcel of this portion of this reply with the same force and effect as if pleaded herein. And the said E. J. Jolly had in said adjuster's report at and prior to said time made a pretended apportionment of the amount of plaintiff's said loss, which amount so apportioned by him the plaintiff had refused to accept from the defendant.

That on the said 5th day of January, 1911, the defendant did make demand upon the plaintiff for arbitration, but said demand was not a demand of the defendant company along, but a joint demand by four of the companies having insurance upon the property of the plaintiff, including defendant, and said joint demand was not such a demand as was permitted or provided for under the terms of said policy, and the selection of the said E. J. Jolly by defendant, as appraiser, was made in said pretended demand, and not otherwise, and was and is void.

And that the said pretended demand for arbitration made by the defendant on said 5th day of January, 1911, was not a demand in compliance with the terms of the policy for appraisement as to the amount of loss, only, but was for arbitration of matters not provided for in the said policy, as well as for the amount of loss.

Plaintiff, for a reply to the further and eighth af-

firmative defense to the cause of action in the complaint alleged, denies each and every allegation in said eighth affirmative defense contained, except that plaintiff admits that defendant is a corporation and as such issued its policy of insurance as alleged in said further and eighth affirmative defense.

And for a further and separate affirmative reply to the said further and eighth affirmative defense the plaintiff hereby reiterates the allegations of its further and separate reply to the third affirmative answer and defense, and hereby makes the same a part of the reply to the said eighth affirmative defense with the same force and effect as though the same had been set forth herein at length.

Plaintiff, for a further reply to the further and ninth affirmative defense to the cause of action alleged in the complaint, denies each and every allegation therein contained, except that plaintiff admits that defendant is a corporation, and, as such, issued its policy of insurance, as alleged in the said further and ninth affirmative defense, and admits that said policy contained the provisions mentioned in paragraph II of said ninth affirmative defense.

And for a further and separate affirmative reply to the said further and ninth affirmative defense, the plaintiff reiterates the allegations of its further and separate reply to the third affirmative answer and defense and hereby makes the same a part of the reply to this ninth affirmative defense with the same force and effect as though the same had been set forth herein at length.

Plaintiff, for reply to the tenth affirmative defense to the cause of action alleged in the complaint, denies each and every allegation therein contained, except that the plaintiff admits that the defendant is a corporation, and as such, issued its policy of insurance as alleged in the said further and tenth affirmative defense, admits that plaintiff has been paid by the St. Paul Fire and Marine Insurance Company, and said Underwriters at Lloyds, the sum of $124,947.95.

Plaintiff, for reply to the further and eleventh affirmative defense to the cause of action alleged in the complaint, denies each and every allegation therein contained, except that plaintiff admits that defendant is a corporation, and, as such, issued its policy of insurance as alleged, and admits that said policy was in the form stated in said answer.

And for a further and separate reply to the said further and eleventh affirmative defense, this plaintiff reiterates each and every allegation contained in the first and second and further and affirmative reply to the first separate affirmative answer and defense, and each and every allegation contained in the further and separate affirmative reply to the third separate affirmative answer and defense, and each and every allegation of the further and separate reply to the seventh affirmative defense, and makes the same a part of its reply to the said eleventh affirmative defense with the same force and effect as though the same had been set forth herein at length.

firmative defense to the cause of action in the complaint alleged, denies each and every allegation in said eighth affirmative defense contained, except that plaintiff admits that defendant is a corporation and as such issued its policy of insurance as alleged in said further and eighth affirmative defense.

And for a further and separate affirmative reply to the said further and eighth affirmative defense the plaintiff hereby reiterates the allegations of its further and separate reply to the third affirmative answer and defense, and hereby makes the same a part of the reply to the said eighth affirmative defense with the same force and effect as though the same had been set forth herein at length.

Plaintiff, for a further reply to the further and ninth affirmative defense to the cause of action alleged in the complaint, denies each and every allegation therein contained, except that plaintiff admits that defendant is a corporation, and, as such, issued its policy of insurance, as alleged in the said further and ninth affirmative defense, and admits that said policy contained the provisions mentioned in paragraph II of said ninth affirmative defense.

And for a further and separate affirmative reply to the said further and ninth affirmative defense, the plaintiff reiterates the allegations of its further and separate reply to the third affirmative answer and defense and hereby makes the same a part of the reply to this ninth affirmative defense with the same force and effect as though the same had been set forth herein at length.

Plaintiff, for reply to the tenth affirmative defense to the cause of action alleged in the complaint, denies each and every allegation therein contained, except that the plaintiff admits that the defendant is a corporation, and as such, issued its policy of insurance as alleged in the said further and tenth affirmative defense, admits that plaintiff has been paid by the St. Paul Fire and Marine Insurance Company, and said Underwriters at Lloyds, the sum of $124,947.95.

Plaintiff, for reply to the further and eleventh affirmative defense to the cause of action alleged in the complaint, denies each and every allegation therein contained, except that plaintiff admits that defendant is a corporation, and, as such, issued its policy of insurance as alleged, and admits that said policy was in the form stated in said answer.

And for a further and separate reply to the said further and eleventh affirmative defense, this plaintiff reiterates each and every allegation contained in the first and second and further and affirmative reply to the first separate affirmative answer and defense, and each and every allegation contained in the further and separate affirmative reply to the third separate affirmative answer and defense, and each and every allegation of the further and separate reply to the seventh affirmative defense, and makes the same a part of its reply to the said eleventh affirmative defense with the same force and effect as though the same had been set forth herein at length.

WHEREFORE plaintiff prays judgment as in the complaint requested.

CAREY & KERR,
and HARRISON ALLEN,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
District of Oregon,
County of Multnomah—ss.

I, F. M. Warren, being first duly sworn, on oath depose and say that I am the president of Alaska Portland Packers' Association, plaintiff in the within and foregoing reply, and that I have read the foregoing reply and know the contents thereof, that the same is true as I verily believe.

F. M. WARREN.

Subscribed and sworn to before me this 16th day of October, 1911.

[Seal.] HARRISON ALLEN,
Notary Public for Oregon.

EXHIBIT "A".

San Francisco, Cal., Oct. 1st, 1910.

Mr. Frank M. Warren, President,
Alaska Portland Packers' Assn., Inc.,
San Francisco, Cal.

Loss at Nushigac, Alaska.

Dear Sir:

Your favor of September 30, 1910, enclosing what perport to be proofs of loss to the several companies in interest have been received by the companies herein designated and the papers in connection with such

claim have been referred to me for examination and reply.

TOTAL INSURANCE:

I note representation of total insurance, whether valid or not, on said property at time of fire, as being one hundred fifty-two thousand one hundred forty-one and 9|100 dollars, on stock and supplies.

UNDESCRIBED UNDERWRITERS IN LONDON.

Are accredited with "Open Cover" on salmon only "From midnight of date of sealing of tins or barrels not exceeding 90 days, part of $250,000."

ST. PAUL F. & M. INS. CO.

Open cover, on salmon, only $26,626.04 (as apportioned) from reading of form attached, this cover seems to provide for Lloyds insurance of 177,135,250,000 stock companies policies of 27,500. St. Paul F. & M. Co. not exceeding 45,165. Total insurance provided for

$322,665

$322,665

APPORTIONMENT:

Is based on the wording of the covers and specific contract with the St. Paul F. & M. I. Co. of which the stock companies have not before been advised, as this is a loss of stock and supplies on land it would seem just to ascertain the status of the several contracts as related to the purely fire insurance contracts, this can only be determined by the contracts as made with the insured corporation, and in order to pass judgment on such contracts, you are requested to comply with policy conditions requiring:

"Shall produce for examination all books of account, bills, invoices and other vouchers * * at such reasonable place as may be designated.

Kindly present all contracts of insurance or covers referring to stock or supplies for which claim is presented in so-called proofs of loss, at the office of E. J. Jolly, Room 606 Royal Building, San Francisco, Cal., at the hour of 10:30 A. M. on Tuesday, October 4, 1910, for examination and to permit extracts and copies thereof to be made as provided by policy conditions.

STOCK INSURED

Policy wording contemplates cover of stock and supplies in the frame building, additions, sheds adjoining and communicating occupied as a salmon cannery. Evidence submitted indicates hanging line, Web and Gil Nets in the net, which did not adjoin and communicate with the described salmon cannery.

STOCK NOT DESTROYED:

Claim presented for total loss of lead, copper, zinc, caustic, soda, coal, tin, pipe and fittings, and other non-distructible supplies, and extras and for belting and hose usually insured with the machinery item of policies, must be questioned, and satisfactory evidence presented that effort was made to recover or save such described property at or after the fire, or of total destruction of the values as presented.

APPORTIONMENT OR SALVAGE:

There is no evidence attached to so-called proofs that covers issued, provide for participation in salvage, and the evidence of supplies saved is not sufficient.

SALVAGE: There is no allowance for salvage although there is attached to so-called proofs, a statement of supplies saved, it is not stated whether such supplies were removed from the burning building, or were stored in other building or locations on the property.

EXAMINATION: In order to set forth all of the facts pertinent to the claim for loss, you are requested, as provided in policy, to present yourself at the office of E. J. Jolly, room 606 Royal Building, San Francisco, Cal., on Tuesday morning, October 4th, 1910, at the hour of 10:30 A. M. to comply with requirement of policies as follows:

"And submit to examination under oath by any person named by this company."

Respectfully submitted,
E. J. JOLLY,
Adjuster.

Authorized by, and acting for
National Union Fire Insurance Co.,
Wm. A. Drennan, Mgr.
Svea Insurance Company.
Globe & Rutgers Fire Insurance Co.
Agricultural Insurance Company.
Edward Burns Sons,
General Agents.

EXHIBIT B.

San Francisco, Cal., Oct. 14th, 1910.

Mr. Frank M. Warren, President,
Alaska Portland Packers' Ass'n,
Portland, Ore.

Dear Sir:

No claim for loss at Nushagak, Alaska.

Document filed Sept. 30th, 1910, purporting to be Proofs of Loss, was defective, as evidenced by amended statement filed by you while in San Francisco, and your attention is called to other defects that should be corrected, as follows:

TOTAL INSURANCE: State in so-called proofs to be "One Hundred Fifty-two Thousand, One Hundred Forty-one and 9|100."

Your order to Broker dated Feb. 26th, 1910, is for $80,000. "To protect up cargo two months after landing" the cargo arrived May 26th, 1910, this cover should have been issued to expire July 26th, 1910" cargo" at that time must have been supplies, and it is fair to presume that your order a part of same letter to cover down cargo "for three months before loading, would have been called upon by you to contribute for any loss of supplies in excess of the

total of $27,500 fire insurance policies in force, had a loss by fire occurred destroying all of the supplies before they had been sealed in tins and become a portion of the season's pack. It is therefore but just to the fire insurance companies that apportionment of loss on supplies includes such portion of insurance ordered to cover down cargo, as would be necessary to cover total value of supplies, at plant for use during the packing season.

As you ordered total insurance of $250,000 and covers were secured by your broker in excess of that amount, it is only fair that all of the insurance ordered and obtained by your broker should be stated in correct proofs of loss.

SUPPLIES: In so-called proofs, a sound value of $21,659.09 is given, this was the statement prepared by your Secretary, for the Adjuster in Portland, and included 10 per cent. for transportation, you file an amended statement adding $7,500.54 for freight and other expenses; will you have a statement

> prepared from the books and vouchers of your office setting forth;—supplies at Nushagak left over from season of 1909, supplies shipped for season of 1910, supplies used in pack of 1910, and remaining supplies in the various buildings as per inventory of Oct. 8th, 1910, to this will be added freight charges, as per schedule obtained from steamship company delivering supplies at Nushagak.

Your attention is called to that part of affidavit of October 7th, 1910, in reply to question:

Q. "There is no allowance for salvage although there is attached to so-called proofs, a statement of supplies saved, it is not stated whether such supplies were removed from the burning building, or were stored in other buildings or locations on the property."

A. Salvage shown in value of supplies necessary to complete packing of salmon and these were also burned and are claimed under policies covering on supplies."

Kindly advise if it is your intention to convey in the above answer the claim that lacquer, benzine, oil and labels necessary to complete the packing of 28,996 cases were in the Cannery Building at the time of the fire and were "also burned and are claimed under policies covering on supplies."

In statement above referred to, there are a number of questions asked, to which you reply, "I do not know personally." You no doubt appreciate that you were not being interrogated personally, but as the President and representative of the Alaska-Portland Packers' Association. Therefore the Association is in duty bound through its representatives to obtain the information asked for in the statement submitted to you, and you are requested to kindly ascertain the evidence from such of your assistants or employees who were at the fire to enable you as a representative of the association to reply specifically to the questions asked. If it is not possible for you to obtain such information it would be necessary for the Companies in interest to obtain the services of an expert accountant in Portland who can develop the information desired from the books and vouchers in the office of the Association, and by affidavits from your foreman and heads of department who were in Nushagak at time of fire.

Apportionment of Loss:

Enclosed herewith is a statement prepared for the Companies in interest, setting forth the loss apportioned to the several kinds of insurance issued and to be issued in so far as the evidence presented can be applied. It is very evident that the apportionment, which is made a part of so-called proofs of loss was prepared for the purpose of protecting insurance to the detriment of the fire insurance policies.

This is not satisfactory or just, and such apportionment must be corrected to bind all of the insurance

issued or to be issued for which covers were or should have been provided by your broker on the explicit orders of the secretary of your association as referred to herein.

Yours very truly,

AGRICULTURAL INS. CO., OF WATERTOWN, N. Y.,

GLOBE AND RUTGERS FIRE INS. CO., OF NEW YORK.

SVEA INS. CO., OF GOTTENBURG, SWEDEN.

Edward Brown & Sons, General Agents.

NATIONAL UNION FIRE INS. CO.,

Wm. A. Drennan, Mgr.

ST. PAUL F. & M. INSURANCE CO.,

Christensen & Goodwin, Managers,

By Chas. Christensen.

ADJUSTER'S STATEMENT.

Claim of the ALASKA-PORTLAND PACKERS' ASSOCIATION, Portland, Oregon.

LOSS AT NUSHAGAK, ALASKA.

Ascertainment of loss from statements presented in support of claim:

SUPPLIES.	Original Claim.	Freight.	Marine Ins. & Wharfage.
Machinery	$ 178.62	$ 1.00	$ 7.11
Metals	2,976.52	79.25	120.16
Contents of Net House	2,238.81	16.00	90.98
Cases, to be used in completing pack	3,506.25	1,299.80	142.54
Supplies in Cannery Bldg. as per statement (9|30|10) destroyed	12,758.89	5,229.97	513.73
Inventory after fire	$21,658.09		
Freight		$ 6,626.02	
Marine Ins. & Wharfage			$ 874.52

Total amended claim				$29,159.63
Less 10 per cent added to original claim for delivery	$ 1,969.09			
Inventory at invoice	$19,690.00			
Supplemental claim				$ 7,500.54
Less, Marine Ins. & Whfg.				874.52
	$ 6,626.02			$ 6,626.02
Inventory & Freight		$26,316.02		
Deduct Machinery	178.62			
Freight	1.00			
Cases to complete pack	3,506.25			
Freight,	1,299.80	4,985.67		
Supplies in inventory			$21,330.35	
Deduct, Metals		2,976.52		
Freight		79.25		
		$ 3,055.77		
Less, Copper	$ 62.66			
Freight	.50	63.16		
Solder & Zinc		$ 2,992.61		
Deduct for value to recover (1-2)		1,496.31	1,496.30	
Value of supplies and nets				$19,834.05

SALMON ACCOUNT.

19,694 cases on vessel	$88,623.00			
3,712 cases on barges	16,704.00			
23,406 cases at $4.50			$105,327.00	
24,996 cases in cans		$112,482		
4,000 cases in cases		18,000		
			$130,482.00	
Value of pack if completed at $4.50 per case				$235,809.00

INSURANCE ACCOUNT.

Lloyds cover	$177,135.00
Marine cover (St. Paul)	45,165.00
Fire policies	27,500.00
Short to complete order	200.00

Insured ordered of Broker (Letter Feb. 25th, 1910) $250,000.00
Lloyds authorized increase, 36750|48500 of $235,809.00 ..... 1,545.00

Insurance provided to care for season's pack $251,545.00

E. J. JOLLY,
Adjuster.

San Francisco, Cal., Oct. 12th, 1910.

APPORTIONMENT.

SUPPLIES:—

Value ascertained (adjuster's Statement) $19,834.05
Fire Insurance issued protecting supplies..... $27,500.00
Order February 25th, 1910, ("Up Cargo) must have been supplies, cover ordered, $80,000.00 for 60 days after arrival, must have been succeeded by order for $250.000, "for three months before leading" which must have covered supplies as there was no salmon in pack at such date, hence, other insurance must protect supplies for.... 52,500.00

Issued and ordered (Feb. 25th, 1910) 80,000.00

To cover loss on supplies:—

Fire Insurance	11-32 part	$ 6,817.90
Other Insurance	21-32 part	$13,016.15

Supplies and contents of net house $19,834.05

SALMON ACCOUNT:—

Salmon in cases, 4000 at 4.50..... 18,000.00

To cover loss on salmon cases,

Fire Insurance	$ 20,682.10	1,618.80
Lloyds Cover	$164,118.85	12,846.10
St. Paul Cover	45,165.00	3,535.10
	$229,965.95	$18,000.00

24996 cases, Salmon in tins $112,482.00
To cover loss of salmon in tins.....$112482.00
Fire insurance excludes lacquer, labels and cases,

Cases and freight.....	$4806.05	
Laq. Lab'ls, & oil.....	1365.31	
Freight	455.10	6626.46

Fire Ins. Contributes on proportion of	$105,855.54	
Fire Insurance	19,063.30	9,531.65
Lloyds cover	151,272.75	80,739.03
St. Paul cover	41,629.90	22,211.32
	$211,965.95	$112,482.00

As apportioned:—

	Lloyds Cover.	Fire Ins.	St. Paul Cover.
Supplies	13,016.15	6,817.90	
Salmon in cases	12,846.10	1,618.80	3,535.10
Salmon in cans	80,739.03	9,531.65	22,211.32
	$106,601.28	$17,968.35	$25,746.42

SUMMARY.

Supplies	$19,834.05	Lloyds cover	$106,601.28
Salmon in cases	$18,000.00	St. Paul Cover	$25,746.42
Salmon in tins	$112,482.00	Fire Insurance	$17,968.35
Totals	$150,316.05		$150,316.05
		Lloyds	$94,355.64
E. & O. E.		St. Paul	$25,631.95
	Apportionment submitted to Companies—fire		$27,281.94
			$147,268.53

E. J. JOLLY,
Adjuster.

EXHIBIT C.

San Francisco, November 8, 1910.

Alaska-Portland Packers' Assn.,
Portland, Oregon.

Gentlemen:

Enclosed report of adjuster for the fire insurance companies in interest is self explanitory. Claim for contribution on loss of supplies under order placed with your broker as set forth by Adjuster Jolly is believed to be founded on facts and legal decisions on

similar apportionments support the claim as advanced in this apportionment.

Freight is based on estimate presented by claimant corporation to companies interested on loss of building and machinery. There is no doubt that the same boat chartered to deliver materials for building and machinery can also take all supplies necessary at the same time and at the same cost.

Therefore, a pro rata allowance is made from all supplies necessary to reconstruct and equip the plant. This opinion is also borne out by similar adjustment, and also by the fact that a vessel can be chartered in San Francisco, at this time of sufficient capacity to take care of all supplies and materials set forth in the adjustment papers of all companies in interest.

Arbitration can now be entered into if desired, and the suggestion of our adjuster in the matter be referred to three competent attorneys, is approved of and if satisfactory to your corporation the necessary papers will be prepared and forwarded you for such appointment and appraisement.

Respectfully submitted,

SVEA INS. CO., OF GOTENBURG, SWEDEN.

GLOBE AND RUTGERS FIRE INS. CO., OF NEW YORK.

AGRICULTURAL INS. CO., OF WATERTOWN, N. Y.

Edward Burns Sons.

NATIONAL UNION FIRE INS. CO.,

Wm. A. Drennan, Manager.

ADJUSTER'S REPORT.

Claim of Alaska-Portland Packers' Ass'n.
Portland, Oregon.

FIRE AT NUSHAGAK, ALASKA.

After careful consideration of the various documents filed by claimant corporation, I desire to report my belief as to the proper award for loss to supplies and the proper apportionment of loss to the several policies and covers, presented by claimant, setting forth the existing conditions at time of fire.

EXHIBIT "A" Is taken in its literal construction and is evidence used to substantiate the claim that insurance was not effected, as ordered by the Alaska-Portland Packers' Association, under date of February 25th, 1910, and as the broker is the agent of the insured, failure to issue insurance as ordered cannot militate against policies obtained from fire insurance companies, furnishing in part only the amount of insurance placed with said brokerage firm and the letter herein referred to is the basis on which claim is made that $80,000 ordered to cover up cargo, five days before loading at Portland, was intended to protect the up cargo set forth in statement of claimant designated.

EXHIBIT "B" To the value of $69,802.83, said up cargo being supplies to be used in the packing of salmon during the year 1910. It is an evident fact that the Alaska-Portland Packers' Association would not order $80,000 of insurance to cover up cargo on $69,-802.83 worth of supplies on ship. It is therefore necessary to add supplies at Nushagak, left over from pack of 1909 evidenced on same.

EXHIBIT "B" To the value of $14,451.31 the total of said being $84,254.14 evidently the supplies ordered covered by letter referred to as

EXHIBIT "A" Said order contemplating, covering said supplies five days prior to shipment from Portland, the marine risk while in transit to Nushagak, and to cover supplies for two months after arrival at Nushagak. As evidenced that the insurance of $80,000 on said up cargo was never issued by broker, instructed so to insure by the Alaska-Portland Packers' Association,

EXHIBIT "C" Is submitted being the copy of the telegram wired from Portland by C. P. Saggent, the brother-in-law of broker Harrison acting for said

claimant corporation in the placing of insurance; the insurance was ordered issued to take effect five days prior to sailing of the vessel from Portland and to cover two months after arrival of said vessel at Nushagak. As the vessel arrived at Nushagak, May 26th, 1910, there was a deficit of insurance for that period of sixty days of $52,500, there being no insurance issued at that time excepting $27,500 issued to cover fire risk only at Nushagak, from May 1st, 1910. It is hardly probable that had fire destroyed supplies to the extent of $84,254.14, that claimant corporation would have permitted their broker to evade payment of $52,500, which he failed to place on such supplies, had they burned before any portion of said supplies had became part of the salmon pack; therefore, following the same line of reasoning it is claimed that second part of the order for insurance as per

EXHIBIT "A" Insuring down cargo to the amount of $250,000, three months before loading was certainly intended to take up the insurance on sup-

plies at the expiration of the original order of $80,000 on up cargo. If such was not intended it would not have been necessary to issue the cover for ninety days prior to shipment of down cargo, as it is a well known fact that for sixty days or more of that period, the down cargo would remain supplies, there being little or no salmon packed prior to thirty days before sailing from Nushagak. Therefore failure of the broker to comply with instructions, cannot be operated to the detriment of the fire insurance, that was issued as part of the $80,000 ordered February 25, 1910, and it is therefore necessary to either apply $52,500 of the $250,000 ordered to cover supplies prior to supplies becoming a part of the salmon pack, or else it is necessary for the broker to issue $52,500 of additional insurance to protect the supplies to the value of $80,000 for the period in which such supplies could not be considered down cargo of salmon. Claimant corporation must look to the broker for contribution for loss on supplies for 52500|80000, of the loss, thereon as apportioned by the representative of the five insurance companies in interest.

SUPPLIES

EXHIBIT "B" Has been segregated so that

EXHIBIT "D" Sets forth only such supplies as were in the cannery building at time of fire for which the fire insurance policies can be called on for contribution.

EXHIBIT "D" Is based on the prices set forth in

EXHIBIT "B" Less 10 per cent. as fire insurance is not liable for advanced sums on shipments to Alaska, "intended to cover use of money, trouble, and expense of buying and assembling goods, in this respect. A fire insurance contract differs from a marine contract; under fire insurance the company reserves the right to replace the property, with like kind at time and place of fire at lowest cash market value, consequently in place of adding 10 per cent. to the invoice, the adjuster claims the right to discount the invoice prices an average of at least 3 per cent. for cash; such discount being easily obtainable in the purchases of this quantity of merchandise at time of fire.

APPORTIONMENT: Is quite complicated, and there are hardly two persons who would apportion loss in the same manner for the reason that ordinarily fire and marine insurance are never mixed in the covers, for the reason that the printed conditions of the policies are entirely at variance and contribution under a fire policy would be entirely changed by the application of marine insurance policy wording.

As apportioned and set forth in

EXHIBIT "E" The award makes fire and marine insurance contribute in full for loss of supplies and salmon, and is the result of the combined efforts of a well known marine adjuster and the adjuster for the fire insurance companies in interest.

It will be noted that the value of cases necessary to complete, pack is removed from the item of supplies, and is transferred so that loss is paid by the marine insurance, for the reason, the fire insurance contract eliminated liability for labels, lacquer, and cases not completed at time of fire, while the marine contracts are drafted so as to cover goods sealed at midnight at the val-

ue of $4.50, the same as it would cover were such cases lacquered, labeled and cased complete.

It is respectfully suggested that this communication be referred to the claimant corporation, with the request that they select an attorney to act with an attorney to be selected by the insurance companies in interest, together with an umpire to be chosen by the said attorneys for the purpose of determining the liability existing under the covers and policies as ordered, delivered and not delivered to the said claimant corporation by their broker.

Respectfully submitted,

E. J. JOLLY,
Adjuster.

[Endorsed]: Reply. Filed October 16, 1911.
G. H. MARSH,
Clerk.

And afterwards, to wit, on Monday, the 16 day of October, 1911, the same being the 13th Judicial day of the Regular October, 1911, Term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Setting Cause for Trial.]

In the Circuit Court of the United States, for the District of Oregon.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY.

No. 3739.

October 16, 1911.

Now, at this day, on motion of Mr. Charles H. Carey, of counsel for the plaintiff in the above entitled cause, It is ORDERED that this cause be, and the same is hereby, set for trial for Thursday, November 28, 1911.

And afterwards, to wit, on the 31 day of October, 1911, there was duly filed in said Court, a Supplemental Complaint, in words and figures as follows to wit:

[Supplemental Complaint.]

In the Circuit Court of the United States, for the District of Oregon.

ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE AND RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

The plaintiff by leave of the Court first obtained, herewith presents and files this its supplemental complaint in the above entitled action and alleges:

I.

That since the filing of the complaint plaintiff has recovered from the debris of the fire in the complaint mentioned, to wit, 15,000 pounds of metals consisting of tin, lead and zinc and dross, that had been melted and run together by the action of the said fire, and 1838 cases of salmon in tins, all more or less damaged as the result of said fire. That the said salvage was obtained with great difficulty and expense by the plaintiff during the summer of 1911, after this action was begun and after the answer to the complaint was filed therein. That the said metal was taken from Alaska, via Portland, Oregon, to San Francisco, California, and the said salmon was brought from Alaska to Portland, Oregon, with the utmost diligence and despatch and by the first ship available for the transportation thereof, and was subsequently sold by the plaintiff under the circumstances hereinafter more fully shown.

II.

That the plaintiff believed at the time it made its proofs of loss and sworn statements of loss, and at the time it filed its complaint that its property was wholly destroyed and lost. That the plaintiff had no knowledge, and had no means of knowing that there was any salvage upon any of its property covered by the policy of insurance mentioned in the complaint issued by the defendant until after the com-

plaint and answer were filed in this action, and did not know and had no means of knowing the value of the property saved or the amount of the expense that would be incurred in connection therewith until the said property was brought from Alaska, which was in September, 1911. That plaintiff, as soon as it received information that the said property had been recovered, notified the defendant, and also notified all of the other insurance companies having policies of insurance upon the said property, but neither the defendant nor any of the said insurance companies gave plaintiff any instructions or advice as to the disposition of the said property or any thereof. That thereafter the plaintiff, on the arrival of the said ship "BERLIN" and on receipt of the said metals and salmon, procured offers for the sale of said property for the account and for the benefit of the plaintiff and all of the said insurance companies, in so far as they had any interest therein, and having received offers for the purchase of both metals and salmon, plaintiff notified the defendant thereof, and each and all of the said insurance companies, in writing, and stated the prices offered, and inquired of the said defendant and each and all of the said insurance companies, severally and separately, whether it or they, or any of them, had any instructions with regard to the sale of the same at the said prices or at any other prices, and whether it, they or any of them would agree that the said plaintiff might make sale of the same at the same or any other prices, or whether the plaintiff should hold part or all of the said goods for a higher price, and also

advised the defendant and each and all of the said in surance compaines, that the plaintiff had thoroughly canvassed the market and was unable to find any better offers, and advised the said defendant and each of the said insurance companies that if it did not, and the said other insurance companies did not agree to the sale of the said property at the said price or other prices, and if the plaintiff did not receive other instructions or objections, or if the plaintiff did not hear from the defendant, or any of the said insurance companies at all, that after waiting a reasonable time the plaintiff would assume that the defendant and the said other insurnce companies acquiesced in the sale of a part or all of the said goods and the plaintiff would proceed to realize the greatest possible amount of money and sell the same for account of "whom it may concern."

That neither the defendant, nor any of the said insurance companies made any response to the said communication, and neither the defendant nor any of the said insurance companies objected to the proposed sale. That after waiting a reasonable time, the plaintiff sold the said property and all thereof, in the month of October, 1911.

III.

That the metal saved was valueless to the plaintiff, and it could not be used in plaintiff's cannery business because it was commingled, but it had a value as scrap metal for smelting purposes only. That the gross value thereof for the latter purpose was $2,-200.00, and the plaintiff sold the same for that sum,

and the said sum was the highest and best price that the plaintiff could or did obtain therefor. That the expense of recovering the said metal and of transporting the same from Nushagak to Portland for sale was $491.69, leaving a balance from the proceeds of the said sale of $1,708.31. That this last named amount should be deducted from the sum of $29,-159.63, the whole amount of the loss on materials and supplies as shown in the plaintiff's proofs of loss and in its complaint alleged, leaving the amount of the loss upon materials and supplies insured as $27,-451.32.

IV.

That the salmon recovered as aforesaid was unsalable and of no marketable or other value in the condition in which it was when recovered, and that in order to put the same into condition so that it could be sold, it was necessary to re-process the same and to re-laquer the cans in which it was contained, and to pack the same in boxes, and to transport the same to Portland, Oregon, all of which the plaintiff did at its own expense, and that the total outlays and expenses incurred in recovering the said salmon and in preparing the same for sale and in transporting the same to Portland, Oregon, and in making sale of the same, including marine insurance on the same while en route, was and is $2,753.05. That the plaintiff sold 1835 cases of the said salmon in October, 1911, at $2.00 per case, amounting in all to the sum of $3,-670.00, and the remaining three cases were used as samples in making the said sale and being so destroy-

ed were of no value and brought no price. That the said sum of $3,670.00 was the highest and best price that could be or was obtained for the said salmon so recovered and was and is the fair and reasonable value thereof. That the net proceeds of the sale of the said salmon was and is $933.60, and that the plaintiff holds the same for account of the several insurance companies, including the defendant, that had policies of insurance on plaintiff's salmon, each in proportion to the amount of its insurance, and said amount of its insurance, and said amount of $933.60 should be deducted from the sum of $125,610.44, the total amount of loss on salmon as claimed in plaintiff's proofs of loss and stated in the complaint.

WHEREFORE plaintiff prays relief as in the complaint.

CAREY & KERR,
Attorneys for Plaintiff.

STATE OF OREGON,
County of Multnomah—ss.

I, FRANK M. WARREN, JR., being first duly sworn depose and say that I am secretary of ALASKA-PORTLAND PACKERS' ASSOCIATION, plaintiff in the above entitled action, that I have read the foregoing supplemental complaint, know the contents thereof and that the same is true, as I verily believe.

FRANK M. WARREN, JR.

Subscribed and sworn to before me this 30th day of October, 1911.

[Notarial Seal.] G. C. FRISBIE,
Notary Public for Oregon.

[Endorsed]: Supplemental Complaint. Filed Oct. 31, 1911.

G. H. MARSH,
Clerk District of Oregon.

And afterwards, to wit, on Saturday, the 6 day of November, 1911, the same being the 30 Judicial day of the Regular October, 1911, Term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Allowing Supplemental Complaint to be Filed.]

In the Circuit Court of the United States, for the District of Oregon.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY.

No. 3739.

November 6. 1911.

Now, at this day, comes the plaintiff by Mr. Charles H. Carey, of counsel, and the defendant by Mr. Joseph Simon and Mr. Ira A. Campbell, of counsel, whereupon, on motion of said plaintiff, it is ORDERED that it be, and it is hereby, allowed to file a supplemental complaint herein, and that said defandant be, and it is hereby, allowed ten days after the filing of said supplemental complaint in which to file its answer thereto.

And afterwards, to wit, on the 21 day of November, 1911, there was duly filed in said Court, an Answer to Supplemental Complaint, in words and figures as follows to wit:

[Answer to Supplemental Complaint.]

In the Circuit Court of the State of Oregon for the County of Multnomah.

ALASKA PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

Comes now the defendant above named and, in answer to the allegations of the supplemental complaint on file herein, admits, denies and alleges as follows:

I.

Defendant has no knowledge or information of the allegations contained in paragraph I of said supplemental complaint sufficient to form a belief as to the truth thereof, and basing its denial upon that ground, denies each and every allegation contained therein.

II.

Answering unto the allegations of paragraph 2 of said supplemental complaint, defendant has no knowledge or information sufficient to form a belief as to the truth of that portion of said paragraph alleging that plaintiff believed at the time it made its proofs of loss and sworn statements of loss, and at the time

it made its complaint, that its property was wholly destroyed and lost, and, basing its denial upon that ground, denies each and every allegation therein contained.

Further answering unto the allegations of said paragraph, defendant denies that plaintiff had no knowledge and had no means of knowing, or had no means of knowing, that there was any salvage upon any or all of its property covered by the policy of insurance, mentioned in the complaint, issued by the defendant, until after the complaint and answer were filed in this action, and did not know, or did not know, and had no means of knowing, or had no means of knowing, the value of the property saved, or the amount of expenses to be incurred in connection therewith until said property was brought from Alaska, which was in September, 1911. Defendant further denies each and every allegation contained therein.

Defendant has no knowledge or information sufficient to form a belief as to the truth of that portion of said paragraph alleging that plaintiff, as soon as it received information that the said property had been recovered, notified the defendant and also notified all of the other insurance companies having policies of insurance upon said property, and, basing its denial upon that ground, denies each and every said allegations, except that it admits that, subsequent to September, 1911, plaintiff notified this defendant that a portion of said property had been recovered.

Defendant admits that it did not give plaintiff any

instructions or advice as to the disposition of said property, or any thereof.

Answering unto the remaining allegations of said paragraph, defendant has no knowledge or information of the allegations therein contained sufficient to form a belief as to the truth thereof, and, basing its denial upon that ground, denies each and every of the allegations therein contained, except that it admits that plaintiff inquired of defendant as to whether or not it had any instructions with regard to the sale of said metals and salmon, and admits that it did not agree to the sale of said property, and admits that plaintiff notified defendant that, if it did not receive any instructions or objections, plaintiff after waiting a reasonable time would assume that defendant acquiesced in the sale of a part or all of said goods.

Defendant further admits that it did not make any response to the communications received from plaintiff, and that it did not object to the sale of said property.

Defendant denies each and every of the other allegations contained in said paragraph.

III.

Answering unto the allegations of paragraph 3, defendant denies that portion alleging that the metal saved was valueless to plaintiff and could not be used, or could not be used, in plaintiff's cannery because it was commingled but admits that it had a value as scrap metal for smelting purposes only.

Defendant has no knowledge or information sufficient to form a belief as to the truth of that portion

of said paragraph alleging that the gross value of said metal, for the purpose of smelting, was twenty-two hundred (2200) dollars, and that plaintiff sold the same for that sum, and that said sum was the highest and best price that plaintiff could or did obtain therefor, and, basing its denial upon that ground, denies that the gross value of said metal for smelting was twenty-two (2200) dollars, and that plaintiff, or that plaintiff, sold the same for that sum, and that said sum, or that said sum, was the highest and best, or highest or best, price that plaintiff could or did obtain therefor.

IV.

Defendant admits that portion of paragraph IV of said supplemental complaint, alleging that the salmon recovered, as aforesaid, was unsalable and of no marketable value in the condition in which it was when recovered, and that, in order to put the same into condition so that it could be sold, it was necessary to reprocess the same and to relacquer the cans in which it was contained and to pack the same in boxes.

Defendant has no knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of said paragraph, and, basing its denial upon that ground, denies each and every of said remaining allegations therein contained, except that it admits that it is informed that plaintiff sold eighteen hundred and thirty-five (1835) cases of said salmon in October, 1911, at two (2) dollars per case, and that the three remaining cases were used as samples in making the said sale, and, being so destroyed

and of no value, brought no price, and as to whether or not said price was a fair market price this defendant is without knowledge or information thereof.

Defendant denies that the net proceeds of the said sale of said salmon was and is or was or is, nine hundred and thirty-three and 60|100 (933.60) dollars, but admits that defendant holds the proceeds of said sale for the account of the several insurance companies interested.

Defendant denies each and every the remaining allegations of said paragraph.

WHEREFORE, defendant prays that the above entitled action may be dismissed with costs, and that the defendant may have such other and further relief as may be deemed meet and equitable in the premises.

GLOBE & RUTGERS FIRE INSURANCE COMPANY,

By Arthur M. Brown,
Its General Agent.

PAGE, McGUTCHEON, KNIGHT & OLNEY,
DOLPH, MALLORY, SIMON & GERRIN,
Attorneys for Defendant.

STATE OF CALIFORNIA,
City and County of San Francisco—ss.

ARTHUR M. BROWN, being first duly sworn, on oath deposes and says:

That he is a member of the firm of Edward Brown & Sons, General Agents of Globe & Rutgers Fire..... ..... Insurance Company, a corporation, the above-named defendant.

That he has read the foregoing answer to the supplemental complaint herein, knows the contents thereof, and believes the same to be true.

ARTHUR M. BROWN,

Subscribed and sworn to before me, this 20th day of November, 1911.

FRANK L. OWEN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Answer to Supplemental Complaint. Filed Nov. 21, 1911.

G. H. MARSH,
Clerk District of Oregon.

And afterwards, to wit, on Tuesday, the 28th day of November, 1911, the same being the 50th Judicial day of the Regular October, 1911, Term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Minutes of Trial Nov. 28, 1911—Motion to Consolidate Cause for Trial.]

In the Circuit Court of the United States, for the District of Oregon.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY.

No. 3739.

November 28, 1911.

Now, at this day, on motion of Mr. John M. Gearin, of counsel for the defendant in the above entitled cause, It is ORDERED that the appearance of Mr. Ira A. Campbell be entered as of counsel for said defendant; and thereupon comes the plaintiff by Mr. Charles H. Carey and Mr. Harrison Allen, of counsel, and the defendant by Mr. Ira A. Campbell and Mr. John M. Gearin, of counsel, whereupon this being the day set for the trial of this cause, said plaintifff moves the Court to consolidate for trial this cause and Cause No. 2727 in which this plaintiff is plaintiff and National Union Fire Insurance Company is defendant, Cause No. 2728 in which this plaintiff is plaintiff and Svea Fire Insurance Company is defendant, and cause No. 3740 in which this plaintiff is plaintiff and Agricultural Insurance Company is defendant, and the Court having heard the arguments of counsel will advise thereof.

And thereupon come the following named jurors to try the issues joined, viz: Frank Hatton, F. G. Buffum, G. W. Waldron, Wm. D. Wheelwright, John H. Haak, Herbert Greenland, Edgar J. Daley, Fred J. Haines, C. W. Kruse, J, T. Wilson, Fred Hampton and George Ridings, twelve good and lawful men of the district, who being accepted by both parties and duly empaneled and sworn proceed to hear the evidence adduced, and the hour of adjournment having arrived the further trial of this cause is continued until tomorrow, Wednesday, November 29, 1911.

And afterwards, to wit, on Wednesday, the 29 day of November, 1911, the same being the 51st Judicial

day of the Regular October, 1911, Term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Minutes of Trial, Nov. 29, 1911—Causes Consolidated for Trial.]

In the Circuit Court of the United States, for the District of Oregon.

No. 3737.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

NATIONAL UNION FIRE INSURANCE COMPANY.

No. 3738.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

SVEA FIRE INSURANCE COMPANY.

No. 3739.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY.

No. 3740.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

AGRICULTURAL INSURANCE COMPANY.

November 29, 1911.

The above entitled causes were submitted to the Court upon the motion of the plaintiff to consolidate said causes for trial, and it appearing to the Court that the above entitled causes are of like nature and relative to the same question, and to avoid unnecessary cost and delay and that it is reasonable so to do, IT IS ORDERED that said causes be, and the same are hereby, consolidated for trial, to which order defendant excepts and the exception is allowed; and thereupon come the parties hereto by their counsel as of yesterday, and the jury empaneled herein being present and answering to their names, the trial of these causes is resumed and the said jury having heard the evidence adduced and the hour of adjournment having arrived the further trial of these causes is continued until Friday, December 1, 1911.

And afterwards, to wit, on Friday, the 8 day of December, 1911, the same being the 58th Judicial day of the Regular October, 1911, Term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Minutes of Trial Des 8, 1911—Motion for Directed Verdict.]

In the Circuit Court of the United States, for the District of Oregon.

No. 3737.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

NATIONAL UNION FIRE INSURANCE COMPANY.

No. 3738.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

SVEA FIRE INSURANCE COMPANY.

No. 3739.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY.

No. 3740.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

AGRICULTURAL INSURANCE COMPANY.

December 8, 1911.

Now, at this day, come the parties hereto, by their counsel as of yesterday, and the jury empaneled herein being present and answering to their names, the trial of this cause is resumed. And thereupon, at the close of all the testimony, said defendants moved the Court to direct verdicts in these causes in favor of the defendants. And the Court proceeds to hear the arguments upon said motion, and the hour of adjournment having arrived, the further trial of this cause is

continued until tomorrow, Saturday, December 9, 1911. And IT IS ORDERED that the jury empaneled herein be excused from attendance upon this Court until Monday, December 11, 1911 at ten o'clock A. M.

And afterwards, to wit, on Tuesday, the 12 day of December, 1911, the same being the 61 Judicial day of the Regular October, 1911, Term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Minutes of Trial, Dec. 8, 1911—Motion for Directed Verdict Denied, Verdict and Judgment.]

In the Circuit Court of the United States, for the District of Oregon.

No. 3737.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

NATIONAL UNION FIRE INSURANCE COMPANY.

No. 3738.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

SVEA FIRE INSURANCE COMPANY.

No. 3739.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY.

No. 3740.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

AGRICULTURAL INSURANCE COMPANY.

December 12, 1911.

Now, at this day, come the parties hereto, by their counsel as of yesterday, and the jury empaneled herein being present and answering to their names, the trial of this cause is resumed. Whereupon, this cause having been submitted to the Court upon the motion of the defendants for an order directing the jury to return verdicts in these causes in favor of said defendants, and the Court being now fully advised in the premises, IT IS ORDERED AND ADJUDGED that said motion be, and the same is, hereby denied. And thereupon said jury proceed to hear the arguments of counsel, and having heard all the evidence adduced and the arguments of counsel and the charge of the Court, retire in charge of proper sworn officers to consider of their verdicts.

And thereafter said jury return into Court the following verdicts, viz:

VERDICT.

"ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

NATIONAL UNION FIRE INSURANCE COMPANY, a corporation,

Defendant.

We, the jury in the above entitled action, find for the plaintiff in the sum of $7,486-80|100 and interest from Decr. 8th, 1910 till paid.

WM. D. WHEELWRIGHT,
Foreman."

VERDICT.

"ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

SVEA INSURANCE COMPANY, a corporation.

Defendant.

We, the jury in the above entitled action, find for the plaintiff in the sum of $6,987-68|100 and interest from Decr. 8th, 1910, till paid.

WM. D. WHEELWRIGHT,
Foreman."

VERDICT.

"ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

We, the jury in the above entitled action, find for the plaintiff in the sum of $4,991.20 and interest from Decr. 8th, 1910, till paid.

WM. D. WHEELWRIGHT,
Foreman."

VERDICT.

"ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,
Plaintiff,
vs.
AGRICULTURAL INSURANCE COMPANY, a corporation,
Defendant.

We, the jury in the above entitled action, firnd for the plaintiff in the sum of $2,994.72 and interest from Decr. 8th, 1910, till paid.

WM. D. WHEELWRIGHT,
Foreman."

which verdicts are each received by the Court and ordered to be filed.

[Judgment Entry.]

In the Circuit Court of the United States, for the District of Oregon.

ALASKA-PORTLAND PACKERS' ASSOCIATION,
vs.
GLOBE & RUTGERS FIRE INSURANCE COMPANY.

No. 3739.

December 12, 1911.

This cause having been tried upon the pleadings and the evidence before a jury, and said jury having returned into Court a verdict in favor of said plaintiff and against said defendant, for the sum of $4,991.20 and interest from December 8, 1910, until paid, making in all the sum of $5,293.95, it is therefore Considered that said plaintiff do have and recover of and from said defendant said sum of $5,293.95, together with its costs and disbursements herein, taxed at $140.07, and that execution issue therefor.

And on motion of said defendant It is ORDERED that defendant be, and is, hereby, allowed twenty days from this date within which to file a motion to set aside said judgment and for a new trial herein, and that execution upon said judgment be stayed for said twenty days. And it is further Ordered that said defendant be and it is hereby allowed until January 1, 1912, within which to prepare and submit a bill of exceptions herein.

And afterwards, to wit, on the 19 day of December, 1911, there was duly filed in said Court, a Motion for New Trial, in words and figures as follows to wit:

[Motion for New Trial.]

In the Circuit Court of the United States, for the District of Oregon.

ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

Now comes the defendant in the above entitled action, by Page, McCutcheon, Knight & Olney and Dolph, Mallory, Simon and Gearin, its attorneys, and moves the Court to set aside the judgment herein entered and for a new trial, for the following causes:

1. Insufficiency of the evidence to justify the verdict.

2. That the verdict is against law.

3. Error in law occurring at the trial, and excepted to by the Defendant in this: (a) The Court erred in refusing to grant the motion of the Defendant to instruct the jury to find a verdict in favor of the Defendant; (b) The Court erred in instructing the jury that the insurance taken out by the Plaintiff in Lloyds was concurrent insurance within the meaning of the permission attached to the policy sued on in this action; (c) The Court erred in instructing the jury that the insurance taken out in the St. Paul Fire and Marine Insurance Company, as appearing from the evidence, was concurrent insurance within the meaning of the permission attached to the policy sued on in this action.

4. The Court erred in refusing to give the instructions requested by the Defendant, and particularly those instructions requesting that the jury be instructed that the Defendant's policy was voided by (a) the procuring of the Lloyds insurance and (b)

the St. Paul Fire and Marine Insurance Company's excess policy, dated May 15, 1910.

PAGE, McCUTCHEON, KNIGHT & OLNEY,
DOLPH, MALLORY, SIMON & GEARIN,
Atty's for Deft.

[Endorsed]: Filed Dec. 19, 1911.
G. H. MARSH,
Clerk.

And afterwards, to wit, on Wednesday, the 20 day of December, 1911, the same being the 68 Judicial day of the Regular October, 1911, Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Overruling Motion for New Trial.]

In the Circuit Court of the United States, for the District of Oregon.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY,

No. 3739.

December 20, 1911.

Now, at this day, come the plaintiff by Mr. Harrison Allen, of counsel, and the defendant by Mr. John M. Gearin, of council, whereupon this cause is submitted to the court upon the motion of said defendant to vacate and set aside the judgment entered herein and

for a new trial; On Consideration Whereof, It is Ordered and Adjudged that said motion be, and the same is hereby, denied.

And afterwards, to wit, on the 10 day of June, 1912, there was duly filed in said Court, a Bill of Exceptions, in words and figures as follows to wit:

[Bill of Exceptions.]

In the District Court of the United States, for the District of Oregon.

ALASKA-PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

No. 3739.

BILL OF EXCEPTIONS OF DEFENDANT.

BE IT REMEMBERED that on the 28th day of November, 1911, at a stated term of the Circuit Court of the United States for the District of Oregon, the above entitled case came on for trial before the Honorable Robert S. Bean, District Judge presiding, the defendant being represented by John M. Gearin, Esquire, of the firm of Dolph, Mallory, Simon and Gearin, and Ira A. Campbell, Esquire, of the firm of Page, McCutcheon, Knight and Olney, and the plaintiff being represented by Charles Carey, Esq., of the firm

of Carey and Kerr, and Harrison Allen, Esquire; thereupon the following proceedings were had:

A jury was impaneled and sworn, according to law, and thereupon plaintiff moved the court for order to consolidate for trial the cases of ALASKA PORTLAND PACKERS' ASSOCIATION vs. GLOBE & RUTGERS FIRE INSURANCE COMPANY, NO. 3739, ALASKA PORTLAND PACKERS' ASSOCIATION vs. SVEA INSURANCE COMPANY, NO. 3738, ALASKA PORTLAND PACKERS' ASSOCIATION vs. AGRICULTURAL INSURANCE COMPANY, NO. 3740, and ALASKA PORTLAND PACKERS' ASSOCIATION vs. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG, PA., NO. 3737, all of which cases were pending for trial in said Circuit Court of the United States for the District of Oregon, and set for trial therein on the 28th day of November, 1911, which motion was granted, and said causes were ordered by the court to be consolidated for trial.

The testimony adduced showed that on February 25, 1910, the plaintiff, ALASKA PORTLAND PACKERS' ASSOCIATION, at Portland, Oregon, by F. M. Warren, Jr., Secretary, wrote to M. C. HARRISON & CO., Insurance Brokers, at San Francisco, California, a letter referring to the quotation that had been furnished by the said M. C. Harrison & Co. on marine and fire insurance upon the cannery of the plaintiff at Nushagak, Alaska, for the season of 1910. The said letter was offered in evidence by plaintiff and was received and marked Exhibit No. 55; said

letter, omitting address and signature, was as follows:

"You agree to cover up cargo to the amount of $80,000, if required and down cargo to the amount of $250,000, if required, policy to cover up cargo five days before loading at Portland and lighterage risk in Alaska on both up and down cargo.

Fire insurance to protect up cargo for two months after arrival and down cargo for three months before loading. Fire insurance to be based on agreed valuation same as in the marine policies, and in the event of loss the stock on hand at a particular date is to be determined by cannery daily pack book; all salmon considered to be cased on midnight of the day when the tins are sealed; 48 tins to be one case.

Kindly confirm this acceptance."

The terms of this proposal were accepted by M. C. Harrison & Co. under date of March 11, 1910, and in accordance therewith, M. C. Harrison & Co. procured the insurance hereafter mentioned in the bill of exceptions, insuring plaintiff's property as in said policies set out. In due course of trial, plaintiff called as a witness in its behalf, M. C. Harrison, who, after being duly sworn, testified as follows:

"Testified that he was the agent for the Marine Department of St. Paul Fire and Marine Insurance Company at San Francisco, California, having connections with the office of Mr. C. B. Sergent, of Portland, Oregon. That he did not represent the fire department of the St. Paul and Marine Insurance Company."

"Q. Now, what other Insurance Companies are

you—were you agent for in 1910?

"A. I held an agenecy * * * *

"Q. I will show you a letter from the National Union Fire Insurance Company, Mr. William Drennan, manager, dated July 29, 1909, and ask you whether you recognize that letter and what it is?

"A. Yes, sir. The letter of authority for me to write business anywhere in Alaska for the National Union Fire Insurance Company.

"Q. As Agent for that company?

"A. Yes sir.

Mr. CAREY: I wish to offer the letter in evidence.

Mr. CAMPBELL. We object to it on the ground of its being incompetent, irrelevant and immaterial, for the reason that it is dated in 1909 and not in 1910, at the time the insurance was issued in this case, the insurance that is the subject of this case, and also upon the further ground that the letter shows that there is no authority granted by the letter to write the characer of insurance which is in suit.

Mr. CAREY: Well, we will show it was issued and accepted by the company in question. I don't think they can hold that their agent did not have authority under these conditions.

COURT: Shows that the policy was issued by virtue of or under this authority?

Mr. CAREY: Yes, sir, and acted upon.

Mr. CAMPBELL: It is an attempt to prove a double agency. Harrison was an agent for the plaintiff and the defendant.

Mr. CAREY: We will prove now that Harrison

was the agent for this company and issued this policy.

Mr. CAMPBELL: Save an exception.

Letter marked "Plaintiff's Exhibit 47."

COURT: Is the issuance of these policies denied altogether?

Mr. CAMPBELL: Not at all, but we do deny that Mr. Harrison issued the policies, and they will show, the minute they are produced.

Mr. CAREY: We will have the policy here, and we will show. I would like to read this letter now.

"San Francisco, Cal., July 29, '09.

Mr. M. C. Harrison,

San Francisco, Cal.

Dear Sir:—

You are authorized to accept and issue certificates for risks located in Alaska not exceeding the maximum per risk and per block set opposite our respective names on the following properties for assureds who own insurable property of a cash value of $7,500 or more; other limitations of risks to be accepted or declined and instructions under this authority are agreed to be those contained in the Agency Instruction Book issued by the Law Union & Crown Insurance Co., of London, which instructions are made part of this agreement.

1. Warehouse buildings and or contents $1500
2. Mercantile buildings and or contents 1500

3. Office buildings and or contents.... 1500
4. Bank buildings and or contents.....$1500
5. School house buildings and or contents 1500
6. Dwellings and or contents 1500
7. Breweries and or contents 1500

You are requested to investigate the moral and financial standing of assureds in the community and also to carefully investigate and consider the moral and physical hazards of each risk accepted, and not to accept risks on which you have not satisfied yourself on those points.

RATES.

These are to be:

1. Printed rates where the risks are specially rated.

2. In accordance with Book Four.

REPORTS.

These are to be made:

1. By wire from the first telegraph station reached after accepting the risk, reporting the name of the assured and amount bound for each company.

2. By mail, sending a signed application with diagram and statement of the amount bound for account of each company.

APPROVAL AND CANCELLATION OF RISKS.

This is to be done in accordance with the terms of certificate which you are authorized to issue, copy

of which is hereby attached to and made a part of this agreement.

Yours very truly,

W. A. DRENNAN,

Manager."

"Mr. CAMPBELL: We move to strike out this—to exclude the letter, for the reason that the letter upon its face shows that it did not empower this man to issue insurance covering the material of the character covered by this policy. No mention of salmon supplies in there—cannery supplies, cannery building or salmon. It is entirely restricted to warehouse, mercantile buildings, office buildings, bank buildings, school buildings, dwellings and breweries.

"Mr. CAREY: We expect to show that this policy was issued under the agency of Mr. Harrison, and he was paid an agent's commission on same.

"COURT: With that representation you may proceed.

"Q. I will show you a letter of July 27, 1909, headed Edward Brown & Sons, and signed Edward Brown & Sons, and ask you what that letter is.

"A. Letter of authority to accept risks anywhere in Alaska for the Globe & Rutgers Fire Insurance Company.

"Q. This letter is identical in form and I will not stop to read it. I will offer it, however.

Marked "Plaintiff's Exhibit 48."

"Q. I show you a letter dated San Francisco, July 27, 1909, headed Edward Brown & Sons, general agents, and signed Edward Brown & Sons, and ask

you what that is?

"A. It is a letter of authority to accept business anywhere in Alaska, for the account of the Agricultural Fire Insurance Company.

Marked "Plaintiff's Exhibit 49."

COURT: Is that identical with the other letters?

Mr. CAREY: Idenical.

* * * *

"Q. Now, Mr. Harrison, will you please state whether or not you issued policies or transacted business for and on behalf of these companies as agent, and in what respect?

Mr. CAMPBELL: If the Court please, we object to the question as being irrelevant and immaterial unless confined to the issues of the particular policies which are in suit.

Mr. CAREY: Your Honor, the question of the agency of Mr. Harrison will be supported by proofs that he was an agent in a large number of Alaska risks which were accepted by these companies, on which they paid commissions, so that the character of his agency will be shown by the nature of the transactions in which he acted as agent.

COURT: I suppose it is impossible for the Court to determine until the facts are known, whatever they may be. It cannot tell from any one isolated thing what the agency was.

Mr. CAMPBELL: I will ask at this time for the production of the original policies so the Court may have them. The Court has not seen them yet.

Mr. CAREY: We will take our own course about

introducing our order of proof, but we will get to the policies.

COURT: If they are not competent, they will be stricken out later, but it is impossible for the Court or anyone else to determine what his authority is until we know the facts.

Mr. CAREY: I will withdraw that question objected to, and ask another.

Mr. CAMPBELL: My objection is the question goes to other insurance and is not confined to these policies.

COURT: The counsel is trying to show general agency, I suppose.

Mr. CAREY: That is within the scope of his authority.

Mr. CAMPBELL: Save an exception.

"A. Shall I state the general course of the business?

"Q. I wish you would, sir.

"A. We were having a man go through Alaska every year. These people were desirous of writing Alaskan business, and they commenced giving us this kind of a document in 1908, specifying in part the kind of business that we were permitted to accept. Our man on his trip in many cases would write a certificate, not signed as agent for the company, but signed in his own name. We never wrote a policy at any time for any one of the companies. The risks would be bound, perhaps, by the man in Alaska and reported to the office of M. C. Harrison & Company in San Francisco. M. C. Harrison & Company would

make a declaration—a small slip called a declaration —to each of the various companies which we had interested. From these declarations the companies would write the policies and send them to us, and we in turn transmitted them to the various assured, collecting the premium and paying the cost. When the man would return from Alaska, the business didn't cease. Another risk would come direct from an assured. Another would come from a banker, who undertook to place the risk for the assured, and it came to us in various ways. The reports that would come to us in San Francisco would be taken and bound on these applications, and sent to the various companies. The policies would be written up at any time during the winter, whether we had a man in Alaska or not, and whether the business was precisely under the terms of this letter or not, providing it was one satisfactory to the companies for which we were operating. That business continued from the middle of the summer of 1908 until 1909. Then they gave us a new letter of instructions, which is this. That letter of instruction, or rather these letters, have been in operation ever since, haven't been cancelled by the companies to this day, but we did, on about the first day of September, 1910, write to the various companies that we, M. C. Harrison & Company were discontinuing this class of business, and that we were turning over that particular department of our business to another man.

"Q. Can you give an idea of the total amount of

that business that you transacted for these companies, in volume?

* * * * *

"A. Well, I should say it would range from $25,000 to $40,000 in premiums per year.

"Q. That is the premiums to the Insurance Companies?

"A. To the various companies which were represented in this manner.

"Q. Will you state whether or not the companies paid you commissions for getting that business for them—for your agency work?

"A. They did. That was the only authority that the companies had for paying me the commission. I was not entitled, under the rulings that the companies and the Board of Fire Underwriters made in San Francisco, to receive a brokerage. They required that every broker before he could receive a brokerage must be a member of the Board of Fire Brokers which they insisted upon the brokers organizing. We didn't join that Board—never would join it, and the companies excused themselves for paying me a commission because I was their agent.

"Q. Now, what was the character of the risk in Alaska that you procured insurance for in these different companies that you speak of, as to whether or not they were all on such risks as are described in the letter, or whether they also cover other kinds of risks?

"A. There were a great many risks covered not specified in that letter, because other risks in many

cases were considered far more desirable than those mentioned there.

* * * * *

"Q. Now, Mr. Harrison, I will ask you whether you acted as agent in placing any insurance for the Svea Company?

"A. I didn't act under the same letter of instructions from the Svea Company.

"Q. No. but did you issue insurance that was accepted by the Svea Company?

"A. I did send in applications to the Svea at various times, with applications for other insurance which was accepted, and in this case I sent in applications to the Svea.

"Q. Edward Brown & Sons are the general agents for the Svea, were they, as well as for some of these other companies defendant here?

"A. Yes, sir.

* * * * *

"Q. Mr. Harrison, in placing the Alaskan insurance during 1909-10, what talks did you have with Messrs. Edward Brown & Sons and Mr. William Drennan as to the character of these risks and what insurance should be placed?

Mr. CAMPBELL: We object as incompetent, irrelevant and immaterial and for the reason that it is parole evidence tending to vary the terms of a written contract—terms of the written authority which has been offered in evidence by counsel, and also the written policies which are in suit in this action.

Mr. ALLEN: This goes to the question of his ag-

ency, Your Honor.

COURT: I presume this is preliminary to the policies themselves.

Mr. CAREY: Yes, sir, I would like to show by the witness the character of the risks that were being accepted through this agency by the various insurance companies, including the Svea Company, and that they issued and accepted the risk on the plaintiff's property, the policy in suit here.

COURT: This witness issued?

Mr. CAREY: Yes, sir; that is, they were issued by these insurance companies through him as their agent under this authority, as I claim.

COURT: As I said a moment ago, it will be impossible to determine what his authority is until the facts are disclosed. This evidence goes in under Mr. Campbell's objection and of course the Court will determine later after the evidence is in.

Mr. CAMPBELL: We ask the record to show an exception. I may say this is reaching a very material part of this case, if the Court please. I don't want to be obstreperous in my objections, yet I feel I should save my record. It is going to the very heart of my case. It is offered for the purpose of proving a double agency.

COURT: Very well.

Mr. CAREY: It is no use to argue it now; we will discuss that later.

"Q. Do you know the question now, Mr. Harrison?

"A. I think I do. I had a conversation with Mr.

Arthur Brown in his office some time in the spring, perhaps more than one, but I am positive that I had at least one conversation.

"Q. What year?

"A. The year 1909. As well as with other companies long before that. Mr. Brown wanted to know why I didn't give him some of my salmon business. My reply was that the arrangement being that it must cover at the time by the marine companies under the combination plan, I couldn't do it, but I would give him all I could. He knew of the—

Mr. CAMPBELL: I object to any conversation about what Mr. Brown knew.

COURT: State the conversation.

"A. We had had previous conversation about the business. He had previously written business for me, I think in 1904 and 5. I am positive that he had written reinsurance in the year 1906, reinsuring the marine department of the St. Paul which was then writing this marine combination. In this very case—

Mr. CAMPBELL: I move to srike out this testimony as to reinsurance in the St. Paul in 1905, as irrelevant to any issue in this case and not touching upon this particular policy.

"A. I can't testify to that, because my records were burned in the fire of 1906 in San Francisco, but I am positive that he wrote a reinsurance in each of his three companies in the year 1906, re-insuring the Marine Department of the St. Paul, which was then issuing these marine combination policies. The plan was then explained to him and again in the year 1909

he wrote on this fire risk, the Globe & Rutgers, for me, a direct policy similar to the one in court here; and he also wrote other cannery risks on which I was writing on exactly the same plan. It was all explained to him at the time.

Mr. CAMPBELL: We move to strike out the last testimony on the ground that the policies are the best evidence. This is parole evidence.

"A. I can explain the policy if that is the question.

COURT: It can have no bearing on this case, but it may throw some light on the relations between Mr. Harrison and the company.

Mr. CAMPBELL: Save an exception.

Mr. CAREY: You will understand it is offered for a double purpose. We want to show that the term "other concurrent insurance" in this policy was placed in the policy advisedly and with full knowledge of the insurance companies as to just the character of the insurance that it was intended to cover.

Mr. CAMPBELL: The question of concurrent insurance is a question of law. Purely and simply a question of law; one upon which this case hangs.

Mr. CAREY: We are perhaps out of the path now.

* * * * *

"Q. Now, Mr. Harrison, did you get any commission from the insurance companies for placing this insurance for them that you speak of?

"A. I did.

* * * * *

"Q. Were you paid in placing this insurance for

the Alaska Portland Packers' Association, for commission or brokerage?

"A. I was paid a commission. It is greater than the ordinary broker is paid.

"Q. Well, I am asking now whether—

"A. I was paid a commission as agent.

"Q. By whom were you paid?

"A. I was paid by the companies, the insurance companies.

"Q. Were you paid by the insured?

"A. I was not except I—I was paid the gross amount that the insured agreed to pay for the insurance when we made the arrangement in the spring with him.

Mr. CAMPBELL: I can't hear that.

"A. I say, the assured, of course, paid the gross amount of the premium that he agreed to pay in the spring; that is the only pay—

"Q. I was asking you whether you got any commission or brokerage from the assured?

"A. No commission.

"Q. You did not, you say?

"A. No, sir.

"Q. You got it wholly from the company?

"A. Altogether.

"Q. Did the Svea Company pay you a commission on the policy it issued?

"A. They did.

"Q. And the Globe & Rutgers?

"A. Yes, sir.

"Q. And the National Union?

"A. Yes, sir.

Mr. CAMPBELL: We admit all that.

"Q. Now, will you please explain the transaction under which the policies in question in this suit were issued by these four insurance companies?

"A. I think I just repeated my promise to the companies to send them some of these risks. I gave instructions to my office to declare to Edward Brown & Sons for their three companies the sum of $15,000, of which we had previously arranged that they in turn were to give $5,000 to the Franklin Fire Insurance Company as a re-insurance on one or all of the other three companies. I also instructed $7,500 to be declared for the National Union. The risks were declared by the office in the usual course of business. The policies came in and were transmitted to the assured.

"Q. Now, I will show you Policy No. 550,017, Globe & Rutgers Fire Insurance Company, and will ask you whether that was one of the policies that was issued in that way?

"A. That was one of the policies. My distinguishing mark is on the top of the policy.

Mr. CAREY: We will offer it in evidence, if the Court please.

COURT: One of the policies in this suit?

Mr. CAREY: Yes, it is really admitted in the pleadings, but I want to use the terms and conditions in it.

Marked "Plaintiff's Exhibit 51."

"Q. I will now show you the policy of the Agricultural Insurance Company of Watertown, New

York, No. 25,144, and ask you whether that is one of the policies that was issued under that arrangement you spoke of?

A. Yes.

Mr. CAREY: I offer that policy in evidence. I will show you policy of Svea Insurance Company of Gotenburg, Sweden, No. 96,051, and will ask you whether that is one of the policies that was issued under that arrangement?

A. That is a policy issued as I have just described.

Mr. CAREY: I will offer these policies in evidence.

AGRICULTURAL policy marked "Plaintiff's Exhibit 52."

SVEA policy marked "Plaintiff's Exhibit 53."

Q. I will now show you policy of the National Union Fire Insurance Company of Pittsburg, Pennsylvania, No. 10,202, and ask you whether that is one of the policies that was issued under that arrangement?

A. Yes, sir, that is.

Marked "Plaintiff's" Exhibit 54.

Mr. CAREY: I will find that out, Mr. Campbell.

"Q. Did you place this with the agencies yourself, or did some one in your employ do it?

"A. I had some conversation but I didn't do all the work. I didn't complete the entire transaction myself.

"Q. Did you prepare this written portion of the policy which is attached to the policy?

"A. I did not, no sir.

"Q. Now, when the policies were issued by the in-

surance companies what was done with them?

"A. They came to my office, were entered in my record and then sent to the assured.

"Q. That is at Portland?

"A. At Portland. Well, I would like to qualify that. I don't recall now whether I sent them direct to the assured or whether I sent them to Mr. Sargent. Upon reflection, I am inclined to the opinion I sent them to Mr. Sargent. That is my recollection.

"Q. Well, if you sent them to Mr. Sargent state whether or not it was ever delivered to the plaintiff in this case.

"A. It was.

"Q. Now, the policies in question here covered salmon at the rate of $4.50 a case or $8.00 per barrel and also covered supplies located and situated as described in the policy. I would like to inquire whether the insurance companies had copies of these written portions of the policies in their office at the time the policies were issued.

Mr. CAMPBELL: If the witness knows.

"Q. Yes, if you know.

Mr. CAMPBELL: Now, you are talking about the slip attached to the face of the policy?

Mr. CAREY: Yes, the description of the policy, what is generally called the written portion of the policy.

Mr. CAMPBELL: I object unless the witness is shown to have personal knowledge.

"Q. Just state yourself, I don't want you to state unless you know yourself.

"A. I don't think I could state positively that they had the written portion of those particular policies, but they did have the written portion of the policies issued the previous year on the same business.

Mr. CAMPBELL: Move to strike it out, if the Court please, as irrelevant.

THE COURT: It is immaterial.

"Q. Now, what information did these insurance companies have outside of your knowledge that you were procuring other insurance at the same time upon the properties covered—that is, upon the salmon?

Mr. CAMPBELL: If the Court please we object to that question as manifestly on its face incompetent, immaterial and irrelevant. He says what information the office had outside of his knowledge.

Mr. CAREY: Outside of his knowledge. He was their agent.

Mr. CAMPBELL: He wasn't their agent.

COURT: If he knows what knowledge they had of additional insurance, I presume he could testify.

Mr. CAMPBELL: It must be by way of conversation, if he knows.

COURT: Something he knew himself.

Mr. CAMPBELL: Save an exception.

"A. As I stated a while ago I discussed with Mr. Arthur Brown the fact of a majority of this business being placed in that Underwriters in London as a combination of fire and marine risks on more than one occasion. I could not say how many.

"Q. What is the fact as to whether they issued

other fire policies where there was marine insurance and under similar terms and circumstances?

Mr. CAMPBELL: If the Court please we object to that as being incompetent, irrelevant and immaterial. The question in this case is the issuance of these particular policies. He is going into other policies and other risks. The policies speak for themselves.

Mr. CAREY: I presume we can show that was written regularly in this form of insurance not only for us but for others. It is a matter to go to the jury.

COURT: There is no question but what they issued these policies?

Mr. CAMPBELL: These particular policies.

COURT: These particular policies but I don't think the other policies.

Mr. CAREY: I suggest to Your Honor what we are trying to do now is to show the knowledge of this insurance company as to the character of the insurance to be placed upon this cannery and the course of dealing with other canneries under this general agency show what their practice was. It is denied in this answer that the insurance company knew that there was to be any other concurrent insurance. We wish to negative that by showing that this slip on the policy permitting other insurance was put there under certain conditions that shows that they were aware of this course of dealing in issuing similar policies to other canneries through this same agent.

COURT: I understand this is an endorsement on

the policy. I have not seen the policy, but I understand there is an endorsement on the policy authorizing other concurrent insurance. There is no question about that?

Mr. CAMPBELL: The misunderstanding is as to the difference between other insurance and other concurrent insurance. If this is offered for the purpose of working an estoppel we have further objections I want to take. But as to what was done with some other policy with some other cannery—

Mr. CAREY: The way to establish agency as I understand was to show what was done by the person in the way of dealing for the principal, and Mr. Harrison has already partly testified on that, but what we want to show now is the course of dealing between him and his principals in placing this large amount of insurance of which this in this case is merely a sample.

COURT: I have permitted him to do that subject to objection, but I didn't understand that was the purport of this question.

Mr. CAREY: The insurance company knew generally that marine insurance and fire insurance was taken out by the cannery and they issued their policies—it was a proper course to pursue here, because their agent placed the insurance and they accepted it and paid for it and cannot be heard to make such an objection now.

Mr. CAMPBELL: If they offer the evidence for that we will make the objection that it is evidence seeking to vary by parole evidence the terms of this

contract.

COURT: If Mr. Harrison was dealing for the company—

Mr. CAMPBELL: Then we will reserve a further objection. It is parole evidence not only offered to contradict the terms of a written instrument but that the agent has no authority to waive any conditions in the policy including the one against which the question is directed except by endorsement written on the policy.

COURT: You are offering this for the purpose of showing Harrison's agency, if he was an agent at all?

Mr. CAREY: Yes sir, the course of dealing between principal and agent.

COURT: And not for the purpose of contradicting this policy or varying it?

Mr. CAREY: No sir.

COURT: Then he may go on.

Mr. CAMPBELL: Exception to the ruling.

"Q. I will put the question in this form. Mr. Harrison, had the insurance companies that are defendants in this case issued any other policies in Alaska through you as agent?

"A. Yes sir, a great many of them.

"Q. About what amount, in regard?

"A. I cannot be positive in that respect, but I should say that Mr. Brown's companies, they had probably somewhere from five to twelve thousand dollars a year in premiums.

JUROR: What amount, not premium?

"A. The number of policies?

JUROR: No, the amount of insurance.

"A. I can't say. I kept more particular track by the amount of premium which is charged on my ledger. I have occasion to see that from time to time although I have not tried to keep the figures in my mind. But the rates in Alaska I should say offhand run all the way from one and one-half to ten per cent and yet even with that it would be very hard to tell how much the aggregate risk of those premiums would equal.

* * * * *

"Q. Now, what is the fact as to whether or not such policies—fire policies—were issued by these agencies concurrently with marine insurance on the same risk?

Mr. CAMPBELL: I object to that question—what is the question?

"Q. (Read).

Mr. CAMPBELL: We object to that if the Court pleases—

COURT: You mean through Mr. Harrison?

"Q. I mean through you—I will add that on the sentence.

Mr. CAMPBELL: We renew our objection, that parole evidence seeking to cary a written contract. The agencies have no authority to vary the conditions of the policy except by written endorsement.

COURT: This goes to the question of an agency.

Mr. CAMPBELL: Exception.

"A. I know we gave Mr. Brown's companies——

Mr. CAMPBELL: The further objection the poli-

cies speak for themselves—the best evidence.

"A. Risks on several canneries during the year 1909 and also gave him risks on at least three or four canneries during the year 1910.

"Q. In this instance you speak of, was there marine and fire insurance both?

"A. I would like to modify my answer there as to that 1910. I wont be positive three or four canneries or not ,but it was for at least two companies, one of whom now operates one cannery and the other operates three. Whether Mr. Brown's company wrote on all three canneries of the second corporation I am not positive at this moment, but I know he wrote for the second corporation.

"Q. In those instances you speak of in your answer, state whether or not they were both fire and marine insurance.

Mr. CAMPBELL: If the Court please we object to that unless these other policies are produced. They are the best evidence.

COURT: I think he can testify.

Mr. CAMPBELL: Exception.

"A. The plan was the same."

* * * * *

"Q. Let me ask you were you agent for the Lloyds?

"A. I wasn't agent, no sir, but the usual course—

"Q. Just the St. Paul Marine?

"A. St. Paul Marine Department."

"Q. Will you state whether or not you placed the insurance on the insured for the season of 1910.

A. I did.

"Q. Now, in a communication, plaintiff's exhibit 32 in this case, addressed to F. M. Warren, President of the Alaska-Portland Packers' Association, Incorporated, dated San Francisco, October first, 1910, and signed by these various insurance companies by their general agents and by Mr. Jolly, Adjuster, occurs the following expression, "Apportionment is based on the wording of the covers and specific contract with the St. Paul F. and M. I. Company of which the stock companies have not before been advised." What is the fact now as to whether that is or is not true as stated in there?

"A. The fact is that both Mr. Brown—Mr. Arthur Brown and Mr. Drennan were advised that this business was being written in conjunction with the marine insurance; that is that the marine policies on the salmon from the time that it was laden at Bristol Bay until arrived at Portland, also covered the salmon while it was in the cannery. But I don't think that I ever gave them the exact wording of the policies but told them it was a combination plan of this kind.

"Q. That is, you mean prior to the loss, the fire, that you never gave them—

"A. Prior to the fire. Prior to the adjustment.

"Q. You gave Mr. Jolly at Portland in August or September, did you not—

"A. Yes.

"Q. the information?

Mr. CAMPBELL: We move to strike out the tes-

timony of the witness as to the conversation had with Mr. Brown or Mr. Drennan as being incompetent in that it is testimony tending to vary the terms of a written instrument and upon the ground that the agents of the companies are not shown to have waived any conditions of the policy by written endorsements upon the face of it.

COURT: You claim this company could have gone on here for two months pretending to settle this loss and claiming all the time they were entitled to the benefit of this extra insurance?

Mr. CAMPBELL: Yes sir.

COURT: And not waive anything by it?

Mr. CAMPBELL: Yes sir. If the Court please, when you come to read the conditions of the policy—

COURT: I was wondering whether you would contend that you could go and send an adjuster to work three or four weeks on a claim and get this information and then after the proofs of loss was submitted you can still cite the assured to appear for examination, affidavits to be signed, questions to be answered, carry on that correspondence, negotiations, for a month or two and finally insist that it was entitled to the benefit in the apportionment to the benefit of this extra insurance, and when they could not agree on apportionment that the companies could then resort to the terms of the policy and try to avoid it?

Mr. CAMPBELL: Absolutely, that policy permits it and the Supreme Court has held that is sufficient.

COURT: I will hear argument on that after while. It is a new doctrine to me.

JUROR: I would like to ask the stenographer to read Mr. Harrison's last answer.

"A. (Read as follows). The fact is that both Mr. Brown—Mr. Arthur Brown and Mr. Drennan were advised that this business was being written in conjunction with the marine insurance; that is that the marine policies on the salmon from the tme that it was laden at Bristol Bay until arrival at Portland also covered the salmon while it was in the cannery. But I don't think that I ever gave them the exact wording of the policies but told them it was a combination plan of this kind.

JUROR: When did you tell them that?

"A. Told them that before the risk was placed.

JUROR: I thought from what was said it was not until after the loss.

"A. I never gave them the wording of the marine policies until afterwards.

Mr. CAMPBELL: We move to strike out the answer. It was something that occurred before and has no reference to this policy.

COURT: He has testified as to the general course of business.

"A. I mentioned this in placing this particular business in the Spring.

COURT: You told him then?

"A. That the most of it was placed as a combination—under a combination plan, the marine companies writing not only the marine risk while at sea but

also on land at the cannery, once the salmon was packed until laden on the ship.

"Q. What time did you begin placing—I will withdraw that. I wish you would describe the Underwriters at Lloyds and state whether or not that is an incorporated company or not, and just how this insurance is issued.

"A. Yes, that is an incorporation, but the insurance is not taken by the incorporated body. There are members individual members, who use the facilities furnished by the corporation for the placing and doing business. The corporation also makes the rule by which the individual members shall abide. But each individual doing business in the institution is permitted to do as he pleases within reasonable bounds. He can take any risk or decline any risk. The customary way is for a broker who has the entry of the room to write on a little slip what he wishes placed. He comes into the room, which is a very large establishment, at which about seven or eight hundred men do business. These seven or eight hundred men do business in little groups; sometimes three or four, sometimes eight or ten, sometimes twelve, fifteen, twenty, all represented by one individual who has a small desk occupying about this much space. The party with the slip goes to the Underwriters and he looks at this; if the risk is desirable and he jots down the amount he will take One Hundred Pounds, Two Hundred Pounds, puts his initials and passes it back to the broker and he passes back to the

room this way and that is the way the business is done.

"Q. What day did you begin taking the Lloyds subscription for the insurance before that. These policies were issued under date of May first, 1910.

"A. I began immediately upon the receipt of my order from the assured. My cable I particularly remember that was the latter part of February. That is, I cabled over to my broker in London to proceed and place the risk not only this one, but in conjunction with several others.

"Q. I will show you a document here and ask you what that is.

"A. That is a short form cover note prepared by the broker in London, taken up to the Underwriters for their signature, this document being intended to be handed to the assured as their protection. If I may explain a little farther, on risks of this character it cannot be known how much risk there will be. A man goes prepared to pack a large amount of salmon. He doesn't know he will get that amount. It would not be fair to make him pay a premium on two hundred and fifty thousand dollars when he might only secure one hundred thousand dollars' worth of salmon. Therefore these underwriters as well as all marine underwriters issue what they call an open cover, making the maximum sum the amount they subscribe, and it being understood that every dollar of risk which shall be incurred by the insured shall be declared in the course of time under this cover note. If the assured should be successful in making a pack of two

hundred and fifty thousand dollars that amount would be declared in due course to the underwriter and premiums paid accordingly. If there should be one hundred and seventy-five thousand or some other figure that amount would be declared, but no more would be shown than the actual amount of risk than might be shown to have existed. This document was handed to the assured as his protection.

"Q. I will ask you whether this is a part of the same—this other paper that I hand you?

"A. It is a part of the insurance arranged during the same season for the same assured.

"Q. All to go together to make up the Lloyds Insurance in this case?

"A. One being received first and on the broker being successful in getting further signatures to the risk which was needed the second document was signed and sent out to the assured.

Mr. CAREY: I offer the documents in evidence jointly.

Marked Plaintiff's Exhibit 56.

Mr. CAMPBELL: That is what you call a covering note, isn't it, Mr. Harrison?

"A. Yes sir.

Mr. CAREY: It is the same as pleaded in this case."

* * * * *

Mr. CAREY: I will show you another document now, Mr. Harrison, and ask you what that is?

"A. That is a cover note signed by the St. Paul Fire and Marine Insurance Company.

Mr. CAREY: I will offer that in evidence also. Marked Plaintiff's Exhibit 57."

* * * * *

"Q. You spoke some time ago about a part of the insurance issued by Brown's agency and sued on in this case having been re-insured by that concern in another company. What was the name of that company?

"A. Franklin Fire Insurance Company.

"Q. Did you have any conversation with Mr. Brown about his protecting his insurance by re-insurance in the Franklin?

"A. I had some conversation—I don't remember particularly which one I had the conversation with—I remember very distinctly having a conversation with either of the Franklins, who wanted some of the business but he was not permtited to write in Alaska directly and he desired me to arrange with some company that was writing Alaska to give him a re-insurance so I arranged with Brown's companies that they were to take from me five thousand dollars more than they were to keep and that they would re-insure their five thousand dollars in the Franklin."

* * * * *

"Q. Now in issuing policies did these insurance companies, defendants in this case, or any of them, confine you to fifteen hundred dollars in the amount of risk to be assumed?

Mr. CAMPBELL: If the Court please, we object to that on the ground that the written authority or printed authority speaks for itself.

COURT: It does, but it may have been modified later, and I understand Mr. Harrison testifies it was, the authority was extended.

Mr. CAMPBELL: Exception.

A. We gave them a great many risks larger than the amounts in the authority where the attaching date of the risk was ahead of the date on which we were making the arrangement.

Q. Now, in your transaction as agent for these companies were you or were you not confined to the character of the risks described in that original letter of authority?

Mr. CAMPBELL: Same objection. The letter speaks for itself—best evidence.

COURT: The objection is overruled.

Mr. CAMPBELL: Exception.

A. No, I wasn't confined absolutely to that. I gave them a great many risks not according to the face of the letter of instructions.

Q. Now, did you place any insurance with them in 1909 or 1910 or with any of them in which you did not receive commissions for them as agent?

A. No, sir, I received commission on every policy I placed with them.

"Q. I will ask you now whether the amount of insurance in force as stated in the proofs of loss which you and Mr. Warren prepared under date of September 30, 1910, stated correctely and truthfully the total amount of insurance that was on the property destroyed at the time of the fire. * *

"Q. Well, I think you have already testified, Mr.

Harrison that there was no other insurance on this. But now, the amount of insurance stated in the proofs of loss that I allude to fix the amount on insurance at $152,141.09. Will you state what composes that amount?

"A. That is a mathematical computation of the proportion of the salmon covered by Lloyds first, the St. Paul policy being an excess policy has the provision detailing at what amount the St. Paul policy shall attach. By the figuring of that provision, what supplies should first be covered by this set of fire policies.

Mr. CAMPBELL: If the Court please we move to strike that out as the conclusion of the witness. The policies speak for themselves.

COURT: It is a conclusion.

"Q. I will ask you, Mr. Harrison, how you get at the total of $152,141.09—what composes it?

"A. I will explain. I get at the total by ascertaining the value of supplies in the cannery at the time of the loss.

"Q. I am not asking you the amount of the loss, but the total amount of insurance that was on the property at the time of the fire.

"A. Perhaps my first explanation was correct.

"Q. I will not interrupt.

"A. It is a mathematical computation so that we could not go astray. I would like to add also that there is an endorsement under this Lloyds cover note, arranged by cable, which the Underwriters have not signed, but the cable of which I have, changing

the proportion from a part of two hundred and fifty thousand dollars to read a part of forty-eight thousand, five hundred pounds.

"Q. What is the difference in dollars between 48,500 pounds and $250,000.00?

"A. I cannot tell you exactly that without figuring it, but I will say this. The total signature to these two Lloyds covers aggregate 36,750 pounds, which exchanged at the rate of exchange customary in our business, $4.82 per pound sterling equals $177,135.00, then the cover note reading part of 48,500 pounds, if you exchange the 48,500 pounds at the same rate, viz: $4.82, you arrive at the denominator two hundred and thirty-three thousand, seven hundred and seventy.

Mr. CAMPBELL: —seven hundred and seventy?

"A. Two hundred and thirty-three thousand, seven hundred and seventy. That fixes the exact proportion of risk that Lloyds' cover attaches to on every single case of salmon, viz: the fraction 177,135|233,770; in decimal that is equivalent to 75.77—or thereabouts—per cent.

Mr. CAMPBELL: Just give me that again.

"A. 75.77. I think that is correct. I am speaking from memory. Per cent of every single case of salmon valued at $4.50 per case as covered by Lloyds Underwriters—no more no less.

COURT: By the—

"A. Underwriters at Lloyds. In addition to which there are some additions by excess on the documents. There is no other possible method of ascertaining the amount of insurance that these underwriters had ex-

cept by that calculation which is used in every part of the world. When a risk reads part of a certain amount, must use it as a fraction. Now this produces at risk of the underwriters under these Lloyds covers as we call it, in the cannery -98,015 and some cents, and if I may refer to a memoranda that I made myself I will tell you the proportions covered in the other places.

COURT: How much in the cannery?

"A. $98.015 and some cents. That cover also, being a cover on ships and lighters as well, covers exactly the same proportion of every case of salmon on the lighters at the same moment. Have I permission to refer to my memoranda—computation?

COURT: Yes.

"A. And by the same method of computation thus cover would have a risk on the barges for the sum of $12,547, and by the same method of computation it would protect on the ship at the same moment the sum of $66,573, the three making a total of $177,135, the exact total of every signature on the document. Naturally we cannot give them more than we subscribe.

COURT: What do you mean by covered one hundred and seventy-seven thousand? One hundred and seventy-seven thousand insurance on the property?

"A. No, these underwriters had a risk on the three parts of the property subject to the terms of their cover at the same moment, a total of $177,135, and that was divided, to the ship lying in the stream, barges that were lying between the ship and the can-

nery and the salmon remaining in the cannery itself.

"Q. How much on the cannery itself?

"A. $98,015.

"Q. How much did the St. Pauls have on the salmon in the cannery?

Mr. CAMPBELL: If the Court please while we have an objection to this line, we do object to the statement as to the St. Paul's insurance being a conclusion of the witness. The document speaks for itself.

COURT: The St. Paul Marine Insurance?

Mr. CAMPBELL: What we call the excess insurance.

COURT: That speaks for itself.

Mr. CAREY: There is no harm in stating it here. We have the figures to get the totals.

Mr. CAMPBELL: We cannot admit the correctness of the figures. It is very apparent the St. Paul figures depend on what the fire figures are.

COURT: Upon what?

Mr. CAMPBELL: What the fire figures are. It does not come in until afterwards.

"Q. I want you to explain, Mr. Harrison, how you got at the total amount of insurance that was put in the proofs of loss, $152,141.09, and you have given a part of it. That is to say, you have given the Lloyds at $98,015. What is the remainder of it made up from?

"A. The remainder. First is $27,500 covered by five different fire insurance companies, the aggregate of whose policies is that figure.

COURT: Is that fire?

"A. Yes, being the Svea Company, $7,000, the Globe & Rutgers $5,000, the National Union $7,500, Agricultural $3,000, and the Fire Department of the St. Paul Company $5,000, making a total of $27,500. Now there were no companies covering supplies except these five companies, the supplies in that cannery at that time amounting to $21,660—

Mr. CAMPBELL: Now, if the Court please, that

COURT: That makes $125,000. Now where did you get the balance?

"A. After deducting the proportion of these fire insurance companies not required to cover all these supplies, from the examination I declared the balance to the St. Paul Company. The balance was covered by the St. Paul Company. That is to say—

"Q. How much?

"A. I can only get it by reasoning.

COURT: How much? You say the total insurance was $152,141.09?

"A. Yes sir.

COURT: Ninety-eight thousand of that was in Lloyds and twenty-seven thousand five hundred in these fire companies. Where do you get the balance?

"A. $26,626.94, or ninety-five cents, ninety-four I think it was in the St. Paul Marine Department, that being the excess.

"Q. That is what we want to know; and the elements that went to make it up."

"Q. In your testimony yesterday, Mr. Harrison,

you said something about the original cover note of the Lloyds having been changed in some respect. What was it you said about that?

"A. The proportion had been changed.

"Q. In what respect was the change made?

"A. The proportion that the Underwriters in London would have been obligated for was increased. By cable.

"Q. I will ask you whether you have the cable correspondence under which this arrangement was made.

"A. Ys sir.

"Q. Is that it?

"A. This is my original press copy of the cable sent to London asking for changes in the proportions of that cover on two different ships, and I have also the reply received the following day from London.

"Q. Now, what was the effect of that. As far as these defendants are concerned, or as far as their liability are concerned?

* * * * *

COURT: What effect it had upon the policies?

Mr. CAREY: In question in this case.

"A. It changed the Lloyds cover from a proportion of 177,135|250,000 to read 177,135|233,770.

Mr. CAMPBELL: You simply changed the denominator from 250,000—

"A. to $233.770.

"Q. Making the Lloyds pay a larger part of the loss on the salmon?

A. Yes.

Q. Now, was this arrangement made before or after the fire?

A. This cable was sent by me on the 18th day of October, perhaps about two hours before the telegram announcing the loss came into my office.

JUROR: October.

A. August, I should say. At the date of the fire, or at any time up to the moment I sent that cable, had the loss been known no endorsement could have been made, the loss would have been necessarily adjusted on the proportion of $250,000 and would have been given the Underwriters in London about ninety-one thousand and some odd dollars, instead of ninety-eight thousand.

Q. Then as you figure, on this they paid some six thousand dollars more than if the change had not been made.

A. They admitted that an interest in the cannery had been covered by them six thousand more than was actually covered on the tenth day of August; in other words, they made their cover retractive, because they were convinced I sent the cabel before I knew of the loss.

Mr. CAMPBELL: I cannot see the relevancy. It is irrelevant what the Lloyds in London were convinced of; the documents in evidence would speak for all this testimony.

COURT: The fact that they did pay it—recognized the liability."

* * * * *

Mr. CAREY: I will offer now this cable message

in reply.

Mr. CAMPBELL: This refers to 85,000 pounds St. Francis, fifty thousand dollars accepted, refers to matters other than this insurance, does it not?

"A. The St. Francis is another company having some business. The proportion was changed on that also.

Cable and reply marked Plaintiff's Exhibit 61."

* * * * *

On cross examination, Mr. Harrison testified: (Mr. CAMPBELL):

"Q. In other words, under this arrangement between you and Mr. Warren you were simply acting for Mr. Warren in placing his insurance?

"A. Hardly that. I made a square out and out deal with Mr. Warren to get his insurance and furnished it to him for so much money.

"Q. Were you an underwriter insuring risks or only placing a risk?

"A. No sir. I agreed that I would furnish him policies, cover notes; or, in other words, protect him by a certain amount. I agreed to do that.

"Q. And to get that you had to go to other people?

"A. Had to go to various underwriters including, of course, the kind that the note describes.

"Q. But in that respect you were placing this insurance for the Alaska-Portland Packers' Association. Now, by your placing this insurance was that any different whatever in placing insurance with other companies?

"A. Yes, there was a difference, yes. Most customers will give a man an order and he will go out and place the business at such rates as the companies will charge. In a case of that kind, I get a pure brokerage from the company that I do business with. But where a man forces me to make an absolute bargain, if I can get the insurance for less it becomes my profit, and if more it is my loss. It is hardly a straight proposition. It is a bargain well driven.

"Q. Did you charge Mr. Warren a higher rate for this insurance than you were compelled to pay the other companies?

"A. The documents show what I charged Mr. Warren.

"Q. Well, did you?

"A. The documents in this case will show exactly what I paid the company.

"Q. What document was that?

"A. At the time I bought the Lloyds policies I should say I paid two and a half for the marine risk. You will see the addition that I paid for the sea risk there.

"Q. Did the Lloyds company pay a commission?

"A. They paid a brokerage to a broker in London who divides with me.

"Q. And is that ten per cent?

"A. And you will also see that I paid these companies on this fire risk a further rate of two or two and a half. I forget whatever their board rate was.

"Q. What was the percentage paid you in London —ten per cent?

"A. The brokerage paid in London is five and ten. The five per cent is taken off first; the ten is taken off second and the second ten really amounts to nine and a half; amounts to a gross of fourteen and a half per cent, but the broker in London keeps the five.

"Q. He was simply in with you on the deal?

"A. Not exactly in with me; he was the man I placed my orders through.

"Q. Sent your business to your London broker and he went over to Lloyds and he placed it with the various underwriters?

"A. That is correct.

"Q. And there was a division between you and the broker?

"A. Yes sir. But you will notice that you add the marine rate that is paid on much of this insurance—two and a half in some cases, 2.17 in others and 3 in others to the rates that I paid for fire additional.

"Q. You got brokerage on that too?

"A. I got a commission, yes sir, from insurance which is more than the ordinary brokerage.

"Q. At Lloyds?

"A. Brokerage at Lloyds?

"Q. Brokerage at Lloyds.

"A. Yes.

"Q. Now, you were in the insurance business in San Francisco, were you at this time? Generally, weren't you. That is to say, you were soliciting business from various concerns and taking that insurance and placing it among other companies?

"A. In 1910 I wasn't very active in the broker-

age business.

"Q. You were in the Spring of 1910 weren't you; you didn't turn M. C. Harrison & Company's business over to your brother until late in the Fall of 1910?

"A. I didn't turn over the brokerage business until the Fall, but for more than a year I have been restricting my operations in the brokerage business at the request of my own company.

"Q. At the request of your own company?

"A. Yes.

"Q. But still you have been engaged in the Spring of 1910 in the brokerage business, had you not?

"A. I suppose I had done some.

"Q. And in the course of that business you had placed the various insurance companies many risks, had you not?

"A. Do you mean fire or marine?

"Q. I am speaking of fire now.

"A. Fire? Probably.

"Q. Yes. Now, what companies did you place such risks with?

"A. I cannot name them.

"Q. You know the San Francisco field well enough, Mr. Harrison, to give the names of the companies.

"A. I can give the names of a great many companies.

"Q. Give me the names of the fire companies with whom you placed business.

Mr. CAREY: We object to that, Your Honor, as

not proper cross-examination and not material in this case.

COURT: I think it is proper cross-examination and material because you have undertaken to show that Mr. Harrison is dealing for these companies, and counsel wishes to show what business he was in. Refute any inference that he may have been engaged with these people.

Mr. CAREY: I should think that this agency for other companies would not necessarily show whether he was agent for this company.

COURT: Go ahead with the cross-examination. I think it is material.

"Q. Now, tell me, Mr. Harrison, what companies you placed fire insurance with. I wont restrict it to the year 1910. Your testimony goes back to the years 1908, 1909, 1910.

"A. Well, I don't know that I could name them all. I could name a number of companies.

"Q. Start out; if you can't name them, maybe I can refresh your recollection.

"A. I think we were placing business for the Concordia, we were agents for them also; placed business with the Law Union in town; we were agents for them also; and placed business with the West Insurance Company, we were agents for them also; that is, for Alaska; I think we placed with New Zealand also under a similar arrangement, and perhaps if you will refresh my memory I might recall some others.

"Q. You say you did place with the New Zealand?

"A. I placed with the New Zealand.

"Q. Have you placed any with the Franklin Fire Insurance Company?

"A. I don't think I ever placed with the Franklin. I may have; that is, the office may have, but I don't remember personally. I may add, however,—

"Q. Did you place any with the Union of London?

"A. Union of London? I would not be positive; it is possible.

"Q. You would not say that you didn't?

"A. I would not like to say that, no sir.

"Q. Did you place any with the Northern Assurance?

"A. Northern? That is in a similar state; I may have placed some; I would not like to say I either did or didn't.

"Q. Did you place any with the Home Insurance Company of New York?

"A. I have no recollection of doing any business with the Home.

"Q. You want to swear you haven't done business since 1908?—

"A. I would not want to swear it but I feel positive we haven't. It is possible. I don't know the manager of the Home. I don't think I know any one connected with it.

"Q. Did you place any with the Insurance Company of North America?

"A. I don't think so.

"Q. Did you place any with the Manchester?

"A. Do you know who represents the company?

"Q. What is that?

"A. Can you tell me who represents the company?

"Q. Mr. Wiper.

"A. I don't know the agent; I don't think so.

"Q. Do you want to say that you didn't?

"A. I would not like to say that. I would like to have you understand that the office places a good deal of business and perhaps small lines of business, a great many of them, never comes to my attention; but I don't remember the Manchester; I don't know Mr. Wiper.

"Q. In other words, you don't know with what fire insurance companies having offices in San Francisco your office, M. C. Harrison Company, placed fire risks during the years 1908, 1909 and 1910?

"A. The offices I have named I was very sure of having placed business; the other offices I have spoken of I am not so sure.

"Q. Did you place any with the Firemans Fund?

"A. I don't think so.

"Q. Do you know whether your office has or not?

"A. I don't believe they have. I would like to add also that we have placed business with the St. Paul.

"Q. What is that?

"A. We have placed a great deal of business with the fire department of the St. Paul; we have nothing to do with that department but the connection of the company naturally causes me to favor them as much as possible.

"Q. Did you place any with the Commercial Union?

"A. I don't think we placed any in those years; although it may be possible. I know Mr. Niebling.

"Q. What is the customary brokerage paid to brokers by the fire insurance companies doing business in San Francisco?

"A. At present?

"Q. Yes.

"A. I don't believe I can tell you that.

"Q. What was it during the years 1908 and 1909?

"A. My recollection is that the customary brokerage on the most of the mercantile business was fifteen per cent.

"Q. A great many brokers doing business in San Francisco, aren't they?

"A. Yes.

"Q. Very important feature of the insurance business, isn't it?

"A. I think it is a very large feature.

"Q. Now, Mr. Harrison, when you were given this letter of July 29, 1909, by the National Union there was accompanying it this certificate, was there not?

Mr. CAREY: What is this paper you have shown the witness here?

Mr. CAMPBELL: One of the papers you have asked for.

Mr. CAREY: It is not the exhibit that is in evidence here. We asked counsel to produce those things and now he produces a certificate and hands that to the witness.

Mr. CAMPBELL: I have not said or inferred that

this was an exhibit in evidence. I asked him whether or not under this letter that was given him he didn't use this certificate attached to the letter. This letter is an exact copy and under my stipulation an exact copy of the letters which were issued by the Agricultural and by the Globe and Rutgers. I don't like the inference of counsel that I am trying to palm off something not in the record.

COURT: Those are in evidence?

Mr. CAMPBELL: And in terms identical with the one I have in my hand addressed to the National Union.

"Q. Now, were you not tendered with each of the letters addressed to you by Edward Brown & Sons on behalf of the Agricultural and on behalf of the St. Paul and the Globe and Rutgers a certificate of that character?

"A. I would not like to say from memory. But if you will let me look at the original letters; if they contain a statement to that effect—

"Q. Don't you recall whether or not in placing these risks in Alaska you used this form of certificate?

"A. I know we used a form of certificate which was printed and which was taken by our representatives on their trips through Alaska. I don't believe that certificate was used except when a representative was in Alaska giving to an assured on the spot something to indicate to him that he was insured. But when risks come from Alaska to our office in San Francisco, not through the representatives, I don't

think any certificate was used at all.

"Q. Will you read the letter of the National Union—after having read it, tell me whether or not that is according to your best recollection a true copy of the letter that was written to you by the National Union.

"A. I would think that is a copy, although having turned in the original yesterday—

"Q. You would not say now it is not a copy?

"A. Oh, no. It has the appearance of being a copy.

"Q. I read from the last paragraph—

Mr. CAREY: Just a moment.

Mr. CAMPBELL: I will offer it in evidence.

Mr. CAREY: I object to it; we have the original in evidence; it is no part of the case.

Mr. CAMPBELL: If the Court please—

Mr. CAREY: Do you want to disprove the original being a true copy?

Mr. CAMPBELL: Not at all; you have asked us to produce a copy of the letters which were given by the National Fire Union Company to Mr. Harrison. We haven't the original. I am producing this copy in accordance with your demand. Your Honor, this is reaching that portion of the case—at the time I called your attention to —at the time of the consolidation that these cases cannot be mixed together. It is a duplicate copy so far as the terms are concerned with the letters which counsel has offered.

COURT: It will be admitted.

Mr. CAREY: I wish to save an exception, Your

Honor. The stipulation yesterday provides, you recollect, that it is agreed that all this shall be the same for all. This is not an original letter and not shown it was ever given to Mr. Harrison, or was ever issued by that company, not signed by anybody and there is no proof here that it is really the original; and that objection is offered in all the others. It is contrary to the stipulation already entered in the court.

COURT: I understand it does not differ at all.

Mr. CAREY: Then it ought not to be in.

Certificate marked Defendants' Exhibit C.

* * * * *

"Q. Now I ask you, Mr. Harrison, if this certificate which I have handed you is to your best recollection a copy of the certificate which was attached to this letter and which is referred to in this letter, and made a part of it.

"A. I cannot say that it is an exact copy, but in tenor it seems to be largely so. I cannot recollect the wording of the certificate. If I have the printed copy I could be definite.

"Q. Well, you would not say that it is not a copy?

"A. No, I would not say that. I see by this certificate that the Michigan Fire and Marine Insurance Company of Detroit, Sun Insurance Office of London, Sun Insurance Company of New Orleans, are all included in that list of companies, for which I was authorized to write.

"Q. You received similar letters from all the companies which are named at the bottom of the certificate, did you not?

"A. Yes, sir.

Mr. CAMPBELL: I offer that in evidence and if counsel wants further proof—

* * * * *

"Q. Now, after you received these letters of authority in 1909, you sent a man through Alaska, did you not?

"A. I went to Alaska myself.

"Q. You went to Alaska yourself?

"A. My brother went with me, and he stayed there.

"Q. And that was through the Yukon Valley Territory and the Tanana Valley Territory?

"A. First L went through the Inside Passage and stopped at several towns.

"Q. But you took no risks, and issued no certificates of insurance under those letters in the coast towns of Alaska where these Fire Insurance Companies were maintaining an agency, did you?

"A. I don't know that any of them were maintaining agencies in Alaska.

"Q. You don't?

"A. No.

"Q. Didn't you discuss with Mr. Brown before this letter was issued to you, the question as to whether you should have the right to issue insurance in Cordova and Seward, and those towns on the coast where they had agencies already established?

"A. I don't remember that.

"Q. You don't remember that?

"A. I feel pretty sure that my brother—he came

out in the winter—came over the trail from Fairbanks to Valdez or Seward—stopped there for a week or two, and did considerable business there. I would not like to say what that was on.

"Q. Do you recall at this time whether he placed any insurance—issued any certificate on behalf of the Globe or National Union or the Agricultural Insurance Companies in these towns on the coast where they had agencies? Do you know?

"A. I don't remember discussing in particular with Mr. Brown, or that they had any agencies in Alaska.

"Q. You don't know whether he issued any insurance there?

"A. I feel pretty sure my brother wrote a considerable amount of insurance, but in which company he placed it under those letters, I cannot say from memory.

"Q. Do you know whether that insurance he wrote was confined to towns other than towns where these companies had agents?

"A. I didn't understand there was any exclusion whatever.

"Q. Do you have any recollection as to whether insurance was taken or not?

"A. Why, I am sure that I took some business in St. Michaels, and I took some business in Nome, personally, and I am sure my brother took some business at Valdez or Seward or both, and perhaps also along the trail between Fairbanks and Valdez, but I cannot recall the names of the insured in each particular

company, or the company that he gave it to.

"Q. You don't know whether he issued any insurance or any certificates on behalf of the Agricultural, the Globe & Rutgers, and the National Union, out of this list of nine companies, in Cordova, and Seward, do you?

"A. I would not like to say positively he did, but I do know he took considerable amount of insurance down there on the coast.

"Q. When you went up the Yukon River Valley and Tanana River Valley, where you people operate, you went to a man personally and solicited the insurance?

"A. I did in some cases, and my brother did in some cases.

"Q. I am not talking about your brother, but about your own, personally. And when you went up to secure a man's insurance, you would use a copy of this form, would you not?

"A. I would use a certificate I think—

"Q. A copy of this form?

"A. Somewhat of the description of that. I would not say word for word. I would not trust my memory that far.

"Q. A printed certificate?

"A. A printed certificate.

"Q. Did you have it prepared yourself?

"A. I did.

"Q. Wasn't it a printed certificate prepared from the form attached to the letters?

"A. I don't know whether the certificate was pre-

pared from the form attached to the letters, or whether I had the certificate prepared first, and printed after having submitted it to the companies. I would not say whether one was made from the other, or the other made from the one.

"Q. In any event they agreed?

"A. I feel quite sure we have a certificate in printed form for each of the various companies that we were acting for.

"Q. And it agreed with the letter that was attached to the authority?

"A. I don't think we over-rode their instructions without first—

"Q. It would not be a natural course of business for you to over-ride their instructions.

"A. It would not. We took tentatively, perhaps, a number of risks that were not attached for some time—that might have been a little different—and sent them down for their approval. I would like to add—

"Q. Just a minute, Mr. Harrison. After you issued a certificate of insurance to the assured, you would advise these various companies with whom you had placed a risk, and a certificate by telegraph, would you not?

"A. When we could do so.

"Q. What is that?

"A. When we could do so.

"Q. When you could do so?

"A. Yes, sir.

"Q. And the cost of those telegraphic tolls were

divided between you and the company?

"A. I don't think they were divided that year.

"Q. Well, they were pro-rated, were they?

"A. No, I don't think so, during that year. There had been business done during one year, during which the companies were paying for the telegrams, but that was unsatisfactory to a number of them, and Mr. Brown for one suggested, if I remember correctly, the flat commission.

"Q. Suggested what?

"A. Suggested the flat commission in addition, and the telegram charges be discontinued, and that commission was applied to all business.

"Q. Then you paid the telegrams yourself?

"A. Paid the telegrams, yes.

"Q. Now, then, after that—after the certificate was issued, you advised the companies of the risk and if they didn't cancel, in accordance with their letter, you would send a duplicate copy of this certificate, would you, into your office in San Francisco?

"A. I am not sure whether a duplicate copy of the certificate was sent, or at any rate, if duplicate copy was not sent, an application or data sufficient upon which the office in San Francisco could write an application, was sent.

"Q. In other words, either a duplicate copy of this certificate was sent to your office in San Francisco, or your office was advised of sufficient data to enable them to fill out an application. Is that right?

"A. Yes, an application with information.

"Q. Now then, when that information came into

the San Francisco office, the office would fill out the application for that insurance, in accordance with the certificate, would they not?

"A. Application or declaration.

Mr. ALLEN: It is understood that all this testimony on cross examination has reference to insurance other than that included in this case?

Mr. CAMPBELL: Exactly. Yesterday we wanted to be bound by the terms of our policy.

COURT: Yes, it is to establish agency.

Mr. Allen: It goes in under our objection.

"Q. You would either fill out an application—your office would either fill out an application or would make a declaration to the Insurance Companies—is that right?

"A. That is correct.

"Q. And then these insurance companies, or the agents of the insurance companies in San Francisco would issue the policies of insurance?

"A. Never issued a single policy ourselves—never.

"Q. But the Insurance Companies upon that declaration or upon that application, would issue the insurance policy?

"A. Would issue the insurance policy from the date that we had accepted the risk.

"Q. And you were paid 15 per cent commission, as you term it, for doing that business?

"A. I think Mr. Brown paid us 17½ and I think Mr. Drennan paid us 20 per cent. That is my recollection.

"Q. That varied with the different companies, did it?

"A. Yes, that varied.

"Q. Did it vary with the different kinds of risks?

"A. No, I don't think there was any less commission paid, and I don't think that there was any more.

"Q. Now, you had nothing to do personally with the filing of the application for these particular policies, did you?

"A. I don't think that I had anything to do perhaps more than to have a conversation as to the amount of the risk that was to be given to the companies, and then forward—I mean with Mr. Brown and Mr. Drennan separately—then afterwards instruct my office the amount to declare. I may have seen the documents as they were going through the office, but I don't think I signed them.

"Q. Now, you had previously talked with Mr. Kinney of the Franklin Fire Insurance Company, had you not?

"A. I had. Mr. Kinney's company was represented by Mr. Sargent.

"Q. And you were on good terms with Mr. Kinney, were you not?

"A. Well, I wasn't on anything other than pleasant terms with him. I don't think we had any business relations.

"Q. Mr. Sargent, who represented your company here in the north, did business with the Franklin Fire Insurance Company, didn't he?

"A. I think I secured the agency for Mr. Sargent,

and Mr. Kinney wanted some of this business. Mr. Sargent wanted Mr. Kinney to have it, and I was requested to go to Mr. Kinney and see if I could not fix it some way so he could get part of the business.

"Q. So you went to Mr. Kinney and Mr. Kinney advised you he couldn't take a risk directly in Alaska, did he?

"A. I believe that was—

Mr. CAREY: I don't suppose it is material in this case.

Mr. CAMPBELL: If the Court please, it was gone into yesterday—the re-insurance with the Franklin Fire Insurance Company.

Mr. CAREY: We were talking about Mr. Harrison's agencies for these defendants and whether he was their agent or our agent, and on that the Court permitted the examination as to his relation with other companies.

COURT: He testified yesterday on re-insurance with the Franklin Company.

Mr. CAREY: It is this point: He said Mr. Brown re-insured some other insurance with the Franklin Insurance Company that has nothing to do with this law suit. They can insure or re-insure all the insurance they want to. It would not affect this case. Now the question here, your Honor, is whether Mr. Harrison can fairly be said to have been the agent of these companies that were paying these commissions, and on cross examination we submitted Mr. Harrison for full investigation on that subject, but when it goes to his relationship with the Franklin Company, or with

any other company for that matter, as to just what terms he was doing business with him on, we think this is outside of the case, and object to the cross examination extending so far.

COURT: Well, if you think the testimony yesterday in reference to re-insurance with the Franklin Company is immaterial in this case, it will be stricken out, which will obviate the cross examination.

Mr. CAMPBELL: If the court please, I am examining this witness on the very question of agency. I think his dealings with the Franklin Insurance Company will reveal that.

COURT: I think you have a right to go in cross examination into this agency question. As to what his relation with these companies was, whether an agent for them, or doing business on his own account for the customers. Of course I don't know to what extent it will be shown he was an agent of these companies when he wrote these policies. I don't know what will be claimed in that at this stage of the record.

Mr. CAMPBELL: I suppose it will be claimed we waive everything because he happened to be the agent of our company. They plead we are bound by Mr. Harrison's knowledge, and whatever he did; he was our agent.

Mr. CAREY: Let me get it clear just what the Court's ruling is. Your Honor rules, I understand now, Mr. Campbell has a right to cross examine this witness as to his agency relations with other companies not parties to this law suit.

COURT: For the purpose of showing the character of business he was doing, whether acting as agent for him or some one else.

Mr. CAREY: Save an exception.

COURT: Of course, if Mr. Harrison was a broker and acting for this Alaska company in placing this insurance, he would not be considered agent for the companies, and if acting for the companies and not for the plaintiff, would be regarded as the agent for the companies.

"Q. Mr. Harrison, have you ever acted as a broker in any other case than the Alaska Portland Packers' Association?

Mr. CAREY: I object to that.

Mr. CAMPBELL: Well, I will strike out the last part of my question objected to, and will ask: Have you ever acted as a broker in placing insurance for other companies?

"A. I have spent a great many years in the brokerage business.

"Q. You have had years of experience in that business? You are one of the oldest brokers on the coast, are you not—I don't mean as to years, but as to business?

"A. I don't know. I commenced back in '93 or '95, but I have not always been in the brokerage business during all those years.

"Q. Now, tell me what is the custom—who pays customarily the broker for his work in placing insurance? Does the assured, the man who has received the insurance, or does the Insurance Company?

"A. The Insurance Companies pay the brokerage, and the broker in my view is the man who gets all of the brokerage that is paid, or all of the commission or discount, whatever you might call it, and he charges to his customer the amount that the Insurance Companies charged for their policies.

"Q. In other words, there is put into the policy which is issued by the Insurance Company the maximum premium, is there not?

"A. The premium.

"Q. The premium which is paid?

"A. The exact premium; which you have paid.

"Q. And the insured pays that premium which is called for in the policy?

"A. Yes sir.

"Q. And that is the consideration he pays for the issuance of the policy to him?

"A. Yes, sir.

"Q. Now, in the usual course of business, those premiums are usually paid to the broker placing the business, are they not, instead of direct to the companies?

"A. In many cases they are paid to the broker. If they know the broker well enough to trust him with large sums of money, they are paid to the broker.

"Q. In some instances if the broker is not well known, they will pay the brokerage to the Insurance Company?

"A. That is correct.

"Q. Now, the broker either remits the full premium to the Insurance Company and the Insurance

Company rebates to him his commission or the broker deducts his commission and remits the balance to the Insurance Company?

"A. There could be the two methods, but the latter one is usually the one.

"Q. Now, after you saw—Mr. Kinney told you that he could not take risks in Alaska under his power or authority from his company?

Mr. CAREY: We object to the conversation with Mr. Kinney, but I suppose the Court has ruled on that.

COURT: The same question I ruled on a moment ago.

"Q. Didn't he?

"A. Mr. Kinney told me some reason. I think he said that his company was not permitted to write in Alaska direct business. I think that is it.

"Q. That is, he wasn't permitted to write direct in Alaska?

"A. Yes.

"Q. But he told you at that time that he would take re-insurance from the Brown Company to the extent of $5,000?

"A. That is correct.

"Q. Now, by re-insurance you mean that after one company has accepted a risk, we will say, on this building for $10,000.00, it may go and re-insure itself in some other company?

"A. That is the idea,—protection of its own liability.

"Q. And after you had made that arrangement

with Mr. Kinney, did you personally go and talk with Mr. Brown, about this re-insurance in the Franklin, or did Mr. Buffington, from your office?

"A. I think I went myself. The conversation, as I remember, was only another complaint from Mr. Brown that I was not giving him my business.

Mr. CAMPBELL: We move to strike that out as not responsive to the question.

"Q. You went to Mr. Brown and advised him that you would place with these three companies how much insurance?

"A. I think $15,000.

"Q. $15,000?

A. Yes, sir.

"Q. And you asked him at that time to re-insure with the Franklin Insurance Company to the extent of $5,000, didn't you?

"A. Yes. Brown asked me for the risks.

"Q. And you gave the reasons which you have given to us?

"A. I told him that the business was really Mr. Sargent's business, and I was doing it for Mr. Sargent, as an accommodation to him, and Mr. Sargent being the agent of the Franklin has asked me to give the Franklin some of the business. I had inquired of the Franklin before—the situation as stated by Mr. Kinney, and Mr. Kinney requested me to fix it with Mr. Brown so he would get it.

Mr. CAMPBELL: If the Court please, I would like to have some of those depositions.

"A. I would like to add something further on the

question of brokerage.

COURT: You may explain.

Mr. CAMPBELL: Go ahead, Mr. Harrison.

"A. My business in Portland prior to 1908 had been conducted by myself in my own name, doing brokerage business as well as an underwriting business here. I sold that business to Mr. Sargent. All this brokerage business went to Mr. Sargent, and as a result of that arrangement there were a few of these large accounts, so important to the customer, so important to Mr. Sargent's income, that I continued my assistance in placing these lines for him, and when I placed this business I did it as an accommodation to Mr. Sargent, and I credited on my books the entire brokerage to him—the entire profit I might say.

"Q. You made it for Mr. Sargent, and Mr. Sargent got the money?

"A. Mr. Sargent got the money. Mr. Sargent is the broker except I didn't give him this extra commission I was getting from these companies.

"Q. Now, before I ask you about this—have you any personal knowledge as to how this was acutally placed? You didn't do this yourself?

"A. I didn't sign it myself, but as I said awhile ago, I am not so sure but what I saw the documents.

"Q. Will you tell me in whose handwriting that is? (presenting paper.)

"A. I think that is Mr. Buffington's.

"Q. Now, when you want—when you went to place this insurance, you made out in your office this form of declaration, didn't you?

Mr. CAREY: That is the insurance in question in this suit?

Mr. CAMPBELL: Yes.

"A. Yes, that is the form we used.

"Q. And in the usual course of your business, Mr. Buffington went over to the agents of the Svea Fire Insurance Company and handed this dicument to them, did he not?

"A. Well, that—I wouldn't say that. He might have handed it in, or it may have gone by mail. I think the customary way for these documents to go would be to go by mail.

"Q. Do you know anything about this particular transaction?

"A. I don't know whether that went by mail or was handed in by hand.

"Q. Have you any personal recollection of going through the office, or going through the transaction of placing this insurance?

"A. I have only detailed the conversation with Mr. Brown and Mr. Drennan.

"Q. That was prior to this?

"A. That was prior to this.

"Q. And you had nothing further to do with them after the conversation with Mr. Brown?

"A. I may have looked over all the documents when prepared for closing the entire risk, but I did not sign the documents.

"Q. That was in your office?

"A. That was in my office.

"Q. But you had no further negotiations with Mr.

Brown or Mr. Drennan about the issuance of these applications?

"A. I don't think I took it over myself. I don't remember to have done so. I may have, but I don't remember.

"Q. Now, the slips which are attached to these applications are carbon copies of the slips which were attached to the policies?

"A. There were slips made out in my office; I remember to have seen the slips. I couldn't positively identify them as being the ones.

"Q. But the slips which are attached to these applications were made out in your office?

"A. I think so. I might add that I glanced—there are two or three of these slips that were introduced in taking the depositions in San Francisco and without being particular as to the exact words or punctuation I think that these slips are the ones that we prepared in our office and sent with the declaration.

"Q. I want to get the man who actually conducted the transaction; otherwise it will be heresay and we don't want that. Now, after these applications were filed with these insurance companies, the policies in issue in this suit—the fire policies were issued, were they not, by the companes?

"A. I think so.

"Q. And they were turned over to you?

"A. I don't know whether sent around by messenger or mailed, but I am sure they came into our office.

"Q. And you sent them to the assured in this case?

"A. I don't know whether I sent them to the assured or to Mr. Sargent. I am inclined to think that I sent to Mr. Sargent.

"Q. In due course they were transferred through you or your representative to Mr. Warren, the plaintiff in the case?

"A. I don't quite agree with that question. Mr. Sargent is the duly authoried agent of the St. Paul Marine & Fire Insurance Company in Portland to do this business, but in doing this business, in placing this insurance, I was placing it for Mr. Sargent. I was really Mr. Sargent's representative, in fact; I was doing it as a gratuity to him because I had sold him the office; because it was a very important customer of his—important to him so far as the income was concerned, and very important to Mr. Warren that the business should be placed exactly as it had been before, and in accordance with conditions that we both understood much better than Mr. Sargent did, who was just coming into the position. So far as what I did in this connection was concerned, I was representing Mr. Sargent; although I conducted the negotiations for Mr. Sargent, I wrote the letter of acceptance in my own name, but all the brokerage, all the profit as far as I can recollect, with the exception of this special underwriting commission, was credited on my books to Mr. Sargent. The profits at Lloyds, profits and commission of the St. Paul Company and the usual brokerage from the companies.

"Q. Mr. Sargent is a brother-in-law of yours?

"A. He is.

"Q. And it is entirely probable, then, that you sent these policies to Mr. Sargent?

"A. I rather think I sent them to Mr. Sargent.

"Q. And he in turn delivered them to the assured?

"A. I think that is the way."

* * * * *

"Q. Will you look at the Svea Fire Insurance policy and tell me what the rate is there?

"A. The rate shown is two and a half per cent.

"Q. And from that you were paid fifteen per cent?

"A. I think I was paid 17½ per cent.

"Q. Do you recall at this time whether you were paid 15 or 17½?

"A. I can't say that I have ever—I feel pretty sure that we have gotten all that is coming to us."

* * * * *

"Q. What rate did Mr. Warren pay upon this particular policy, I am asking (witness referring to National Union policy).

"A. I couldn't tell you.

"Q. Paid the rate specified in the policy, didn't he?

"A. No, sir, paid me two eighty-five for the combined insurance. The marine risk at Lloyds cost two and a half, less this usual brokerage there, plus further charge for fire; the marine rates in San Francisco were three per cent less usual discount of ten per cent

to the assured, which would bring it to two seventy net rate. Now, if you add this two twelve that would bring it to four eighty something.

"Q. Let me ask this, Mr. Harrison: How do you arrive at the total premium paid to you by Mr. Warren?

"A. By methods of figuring used in my office that enable me to make money.

"Q. I have no doubt about that; I am not disputing your money making ability; we all know that.

JUROR: Wasn't this contract between you and Mr. Warren that you were to provide him with all that insurance at two eighty five?

"A. It was a divided contract. I was to purchase insurance on every dollar of supplies shipped north and every dollar of salmon shipped south at a rate of two eighty five paid by Mr. Warren to me, and I was to do the best I could. But get it cheap or get it high, make money or lose it, I was to provide the insurance at that rate."

* * * * *

"Q. Now, this business, doesn't Mr. Sargent's books show all this?

"A. I don't think so, no, sir.

"Q. All the commissions you got were turned over to Mr. Sargent?

"A. No, no, I charged Mr. Sargent with the net cost of this business.

"Q. Oh, I see.

"A. The net cost, that is to say I made the various deals with the Underwriters, paid the net premiums

to them, London, San Francisco and elsewhere, wherever it was placed—I think it was in London and San Francisco only—and charged Mr. Sargent with the net cost of it. Mr. Sargent collected from Mr. Warren two eighty five; the difference was profit.

"Q. In your statement—didn't you render a statement to Mr. Sargent which will show just exactly the total amount of premium paid and that were paid to the various companies and the total amount and the itemized statement of expenses?

"A. I think I rendered Mr. Sargent a statement showing the net cost of all the insurance.

"Q. Don't you render a statement showing the gross cost so he may have means of checking up with you?

"A. Why, no; I don't think that would help him any if he was willing to take my statement as to what it cost absolutely net; he was collecting the premium.

"Q. Then if there was any difference between the average rate, or rather if there was any difference between the amount of premium that you were required to pay to the insurance companies under the policies which you received from them and this rate of two eighty five which you charged Mr. Warren for placing the insurance, that was a profit that went to you and to Mr. Sargent?

"A. That was the profit which I accounted for to Mr. Sargent, and if the insurance cost more that was to be our bad fortune.

"Q. Do you know what that profit was, Mr. Harrison? I don't want the figure, but there was a profit,

was there?

"A. Am I obliged to answer that, Your Honor?

Mr. CAREY: I don't believe the witness is required to reveal his own affairs in that way. I object to the question.

COURT: Just ask the witness whether there was a profit or loss.

"Q. I don't care for the figures. Was there any profit?

"A. There was a profit, yes, sir.

"Q. Now, Mr. Harrison, am I correct in my understanding of the St. Paul Marine cover that the liability under the St. Paul cover could not be determined until you ascertained the amount of liability on the combined Lloyd and fire policy—that is, on salmon?

"A. That was the intention, yes, sir.

"Q. In other words, the St. Paul cover came in and operated what we might term an excess cover?

"A. Excess cover.

"Q. After the liability—after the fire insurance covers and the Lloyd covers had been exhausted then the St. Paul came in and paid?

"A. The St. Paul was not to get a line—was not to get anything except after the other companies got their insurance according to their policies and their cover notes, and then if anything left the St. Paul was to get it.

"Q. Now then, the fire companies under the terms of their policies——

Mr. CAREY: Don't the policies explicitly show

and isn't it a legal question as to what their liability is? We don't think that is proper cross examination.

Mr. CAMPBELL: Counsel went into apportionment; it is a poor law that wont work both ways.

THE COURT: You have a right to ask these questions. Counsel asked about these in making up a statement for the broker.

Mr. CAMPBELL: He is the man who figured the loss.

Mr. CAREY: I don't think either the court or counsel has exactly understood what I was getting at. What I was asking this witness was how he got at the figures that he put on the proofs of loss that were submitted to the defendants for the purpose of showing that he made a proof of loss, and made it according to their belief that it was right. That is all there was as to that. I never asked this witness, and I wouldn't think I had the right to, what the legal construction of a St. Paul cover or policy was, or what the legal liability of the Lloyd Company was according to its policy; but these are legal questions to be decided by the court under instructions to the jury and I object to this cross examination in general, but this particular question which is asked the witness as to his construction of this policy of insurance I don't think that is right; that is what I object to.

Mr. CAMPBELL: If counsel doesn't want to submit his expert to my cross examination upon this question I waive it. He produces an expert here, submits him to a half a day's examination and then

doesn't want to give me a chance at it. I will waive that part of it.

Mr. CAREY: I don't think that is just what I said.

"Q. Mr. Harrison, had you placed insurance before for this cannery on the same lines as this insurance which is in controversy here?

Mr. CAMPBELL: I think that is a leading question.

COURT: You mean with these companies.

Mr. CAREY: Yes, with these companies. That is what I was trying to get at.

COURT: I understood him to mean by that he was anxious that this business should be done for the assured as it had been done before.

"Q. Let me ask a question or two. Maybe I misunderstand. Is it a fact, Mr. Harrison, that you had been instrumental in getting insurance for this plaintiff on this cannery in other years prior to this time?

"A. Yes, sir, I had had business in my office ever since the cannery was organized, every single year successively, and the business was never placed on what is known as the ordinary plan of ordering $150,000 of insurance whether you got any goods or not.

"Q. No, no; what is the fact as to whether or not prior to this year you had been placing joint marine and fire insurance on the cannery?

"A. It is a fact.

Mr. CAMPBELL: Let me understand that question.

"Q. (Read).

Mr. CAMPBELL: With this company?

Mr. CAREY: I am going to follow it up and show that this company had insurance, or some of them had policies before this on this very plan.

"A. It is a fact that this same plan had been in use by me for this special cannery during all the time I had the business from its inception.

"Q. What is the fact whether or not either the National Union, the Agricultural, the Svea or the Globe & Rutgers had carried a part of that insurance in previous years on this cannery?

Mr. CAMPBELL: I object, if the Court please, on the ground that it is parol evidence offered to alter or contradict the terms of a written instrument, the policies speak for themselves; secondly, the agents of the company. if Mr. Harrison were agent, have no authority to waive any conditions of the policy except by written endorsement on the policy or attached thereto; and no waiver of said condition was endorsed on the policy; and, third, there is no showing that the company had any knowledge of it.

COURT: It will be admitted here the same as the others and for the same purpose—purpose of showing agency.

Mr. CAREY: That is the sole purpose of it now.

"A. My recollection is that the years of 1904 and 1905 both Mr. Brown's companies, which ones I cannot say now—

"Q. Which are Mr. Brown's companies?

"A. The Globe & Rutgers, the Agricultural and the Svea—in 1904 and 1905 they had risks on this same cannery on supplies and on salmon.

Mr. CAMPBELL: I would like to ask Mr. Harrison one or two more questions.

"Q. I will ask you to look at these documents, Mr. Harrison, and tell me what they are.

"A. Shall I detail them?

"Q. No, tell me what they are.

"A. Some are companies' policies and some are Lloyds' policies.

"Q. By whom were they issued?

"A. By the companies whose names appear hereto and by underwriters of Lloyds'.

"Q. Are they the policies——

"A. Of course, you understand, Mr. Campbell, I am testifying about something I don't know any more than that I received these policies from my broker.

"Q. You know whether they are policies or not, don't you?

"A. I know they are the usual form of the Lloyds' policies. I received these from my broker in London. I didn't receive them from the underwriters nor from the company.

"Q. Are they the policies which were issued by the various subscribers to the covering note—the Lloyds' covering note?

"A. I presume so.

"Q. They were sent to you by your agent with that understanding, were they not?

"A. They were sent to me in the usual course of business.

"Q. Now, Mr. Harrison, weren't they sent as policies to this covering note?

"A. I think the policies were.

"Q. Don't you know?

"A. No, I don't.

"Q. Don't you know whether or not those policies were sent pursuant to this covering note?

A. I have the strongest kind of a belief they were not.

"Q. Did you place any insurance upon any of this plant or any property of the plaintiff except what was first covered by the covering note?

"A. Nothing except what was covered by that note and the St. Paul.

"Q. Have those policies ever been shown to the defendant corporations until produced here in court yesterday afternoon, to your knowledge?

"A. Not that I know of.

"Q. Haven't they been in your possession continuously since you received them?

"A. Well, I presume they have. These policies bear date of receipt April 27, 1911.

"Q. But they have been continuously in your possession. You don't know that they have been out of your possession?

"A. I don't think so.

"Q. They have been in your safe in San Francisco?

"A. I think so.

Mr. CAMPBELL: We offer the policies in evidence if the Court please.

Mr. CAREY: We object, if the Court please, simply to save the point we made heretofore that the oth-

er insurance or method of settlement is not proper.

COURT: They will be admitted.

Defendant's Exhibit "E".

ARTHUR M. BROWN, being called as a witness on behalf of defendant, testified as follows:

"Q. Mr. Brown, are you a member of the firm of Edward Brown & Sons?

"A. I am senior member.

"Q. Who are the members of that firm?

"A. My brother and myself.

"Q. What is your brother's name?

"A. Herbert H. Brown.

"Q. Herbert H. Brown. Are you the general agent in San Francisco of the Agricultural Insurance Company?

"A. I am.

"Q. And of the Globe & Rutgers Fire Insurance Company?

"A. Yes.

"Q. And of the Svea Fire Insurance Company?

"A. Yes.

"Q. Did your firm, Edward Brown and Sons, issue the policies of insurance on the salmon and supplies belonging to the plaintiff corporation, which policies are the subject of suit in this action?

"A. Yes.

"Q. Did you have any conversation with Mr. Harrison prior to the issuance of your policies regarding insurance upon this risk?

"A. No, sir.

"Q. What part of the business do you particular-

ly look after?

"A. I look after the loss adjustments and the correspondence of the home offices.

"Q. Did you have any knowledge of the fact that Mr. Harrison had procured for the plaintiff corporation this Lloyds Marine Insurance and the St. Paul Marine excess insurance prior to the issuance of the policies by your companies—your office?

"A. No, sir.

"Q. When did you first become advised that Marine insurance of Lloyds and excess marine insurance with St. Paul had been taken out upon that property which you were covering-

"A. After the fire.

"Q. Did you ever advise your companies that the plaintiff corporation had procured other non-concurrent insurance upon the properties which were covered by your policies?

Mr. ALLEN: What is that question? Then we would like the same objection to this we made before.

COURT: Very well. Same ruling.

Mr. ALLEN: Exception.

"A. Yes.

"Q. Will you state when that was?

"A. After suit had been brought against us.

"Q. I will hand you plaintiff's exhibits 48 and 49, and ask you whether or not the firm of Edward Brown & Sons as general agents of the Agricultural and Globe & Rutgers Fire Insurance Companies issued those letters of authority to Mr. Harrison?

"A. They did.

"Q. Was any such letter of authority issued by Edward Brown & Sons as general agents of the Svea Fire Insurance Company to Mr. Harrison?

"A. No.

"Q. No letter of that character was ever given. Will you state whether or not Edward Brown & Sons as agents for the Globe and Rutgers, the Svea and the Agricultural Insurance companies ever gave to Mr. Harrison any other written authority or printed authority to issue insurance or to assume insurance in its behalf other than these letters?

"A. Not to my knowledge.

"Q. If they had you would have had knowledge of that fact?

"A. I would, yes, sir.

"Q. Did you ever give Mr. Harrison any written authority or printed authority to issue any policies touching any of the property insured—of the plaintiff corporation, covered by your policies in this suit?

Mr. CAREY: Does the question relate to written authority?

"A. May I have the question?

"Q. I will ask you the question again. Had Edward Brown & Sons as general agents of the Svea, Agricultural and Globe & Rutgers ever given Mr. Harrison any written authority to issue any policies of insurance covering on the property of the plaintiff corporation, which property is covered by your policies in suit?

"A. No.

"Q. Was Mr. Harrison ever made an agent of the Globe & Rutgers Rire Insurance Company and the Agricultural Fire Insurance Company by any verbal arrangement other than the written letter of authority which is in evidence?

Mr. CAREY: That is a question for the Court and the jury, Your Honor, under all the circumstances.

COURT: He can testify about it. The jury cannot determine unless he testifies about it.

Mr. CAREY: We don't object to the fact, but his conclusion.

COURT: He can testify.

Mr. CAREY: Save an exception.

"A. No.

"Q. Was there ever any authority, either verbal or written, conferred upon Mr. Harrison constituting him an agent and authorizing him to assume insurance on behalf of the Svea Insurance Company?

Mr. ALLEN: We object to that as incompetent, irrelevant and immaterial. The question is for the jury.

COURT: He can answer.

Mr. ALLEN: Exception.

"A. No.

"Q. When these policies in suit, issued by your firm on behalf of the various corporations were issued, was Mr. Harrison paid any commission?

"A. Yes.

"Q. How much?

"A. He was paid on these policies a commission of fifteen per cent.

"Q. Will you state what is the usual customary brokerage rate paid to fire insurance brokers placing business with fire insurance companies in San Francisco?

"A. On all business in Alaska the commission is fifteen per cent.

"Q. You have heard Mr. Harrison's—Your company is a member of this Board?

"A. Yes.

"Q. The insurance trust that Mr. Carey talks about?

"A. I wont admit that.

"Q. You heard what Mr. Harrison said to the effect that no insurance company a member of the Board of Pacific Underwriters has any authority to accept insurance from a broker who is not a member of the brokers' exchange?

"A. Yes.

"Q. Now, will you state to us what the rule is in that regard?

Mr. CAREY: I think if the rule is produced, Your Honor—

COURT: Harrison testified about the fact.

Mr. CAMPBELL: We asked for the rule and could not get it.

COURT: Let him testify.

CAREY: On cross examination I asked him about the rules.

COURT: He can testify.

"A. The rule of the Board is that no commission is to be paid on San Francisco business except to a

member of the brokers exchange, and no commission is to be paid on business throughout the country except to brokers members of that exchange and to duly authorized agents.

"Q. Was brokerage paid to any other person?

"A. Yes, sir.

"Q. What other person—was brokerage paid by any of the fire insurance company to any other persons placing fire insurance with them?

"A. Yes, sir.

"Q. What other persons?

"A. It has been the custom of the insurance street for years to pay brokerage to recognized insurance men where they were outside of the fire insurance business, such as marine general agents and to life general agents and accident general agents—those who were recognized as being in the insurance business.

"Q. Does Mr. Harrison and Mr. Harrison's office in San Francisco come within that classification?

"A. Oh, yes.

"Q. By virtue of what?

"A. Mr. Harrison is one of the oldest established brokers and marine general agents in San Francisco.

"Q. Marine general agent of what company?

"A. St. Paul, I believe, and Mr. Harrison's office has always to my recollection had brokerage on the business which he has placed.

"Q. Have you received any business from Mr. Harrison's company as agents since the personal retirement of M. C. Harrison himself?

"A. Yes, sir.

"Q. Has Mr. Harrison ever advised you that he was retiring personally from the brokerage business?

"A. Yes, sir.

"Q. What did he state to you?

"A. My recollection is he wrote a letter stating that he was retiring from the brokerage business. This letter was written the latter part of this year or middle of this year, saying he was retiring from the brokerage business and turning it over to his brother.

"Q. Has his brother been placing any business with your company since that?

"A. I think so; I would not swear.

"Q. Have you paid him any brokerage?

"A. If he has placed any business he has undoubtedly been paid brokerage.

"Q. Will you state whether or not it is a fact, that Mr. Harrison was the agent of these three companies in San Francisco, other than the authority conferred upon him by these letters?

Mr. ALLEN: If the Court please, this witness cannot form—this conclusion I think is objectionable.

COURT: I think it is competent for the witness to testify.

"A. No.

"Q. You know Mr. Jolly, do you?

"A. Yes.

"Q. Edward Brown & Sons ever give Mr. Jolly any written authority by which Mr. Jolly was empowered to waive any of the provisions embodied in

your policies of insurance?

"A. No.

"Q. State whether or not Mr. Jolly was ever given any verbal authority to waive any of the conditions and provisions in the policies?

"A. No, sir.

"Q. Have your companies ever written any insurance—any fire insurance in conjunction with Lloyds Marine insurance, or St. Paul Marine excess Insurance or marine excess insurance of any other company than the St. Paul?

"A. With knowledge we were writing it?

"Q. Yes.

"A. No.

"Q. Have you any present knowledge of your companies having done so?

"A. No.

"Q. Had you been advised by Mr. Harrison prior to the issuance of your policy that it was his intention to procure Lloyds Marine insurance and St. Paul excess marine insurance covering on the same properties covered by your policies, would you have written your policies?

Mr. CAREY: We object to the question as leading and calling for a conclusion of the witness.

COURT: I think it is a competent question.

Mr. CAREY: I think the Court ruled it might be admitted before, but I wanted to save the record.

COURT: Very well.

"A. No.

"Q. Did you have any conversation with Mr. Har-

rison regarding a re-insurance with the Franklin?

"A. No.

"Q. Did not. Do you know whether that conversation was with your brother and not with yourself?

"A. I have been told it was with my brother, but I didn't have any conversation.

"Q. Is there any other statement, Mr. Brown, you want to make that is material to the issues of the case?

"A. I think not."

On cross examination the witness testified:

"Q. Mr. Brown, do I understand you to say that if you had known that Mr. Harrison intended to get this marine insurance from Lloyd's and the St. Paul that you would not have written the policy in question?

"A. Not in the form they are written in.

"Q. Not under that form?

"A. No, sir.

'Q. Would you have written insurance on the cannery in question and supplies in any other form?

"A. With the knowledge they were going to issue that insurance?

"Q. Yes, sir.

"A. No, sir.

"Q. Did you ever have any fire insurance in the Globe & Rutgers and these other companies that you represent on the cannery of the Alaska Portland Packers' Association at the same time and concurrently with the marine insurance in the St. Paul?

"A. Not to my knowledge.

"Q. How long have you been the agent—how many members of your firm are there?

"A. Two.

"Q. Who are they?

"A. My brother and myself.

"Q. Operating under the name of Edward Brown & Sons?

"A. Yes, sir.

"Q. What companies do you represent?

"A. Globe & Rutgers, the Svea and the Agricultural.

"Q. Those are the three companies outside of Mr. Drennan's companies that are involved in this lawsuit?

"A. Yes.

"Q. I will ask you to look at this policy issued by your company in 1906—and first ask you whether that was issued by your firm for the Svea Company?

"A. Yes, sir.

"Q. I will ask you to read that slip that is on the face of it to the jury.

"A. (Reading). "It is understood and agreed that this policy re-insures the St. Paul Fire & Marine Insurance Company on their interest as insurers under their Marine Department Policy No. "—blank, I cannot make it out,—"and or open cover No. blank"—

"Q. I think the remaining words are "upon the former policy," not the open cover.

"A. (continuing reading) "And not as originally written."

"Q. So you did, in 1906, re-insure the St. Paul

Fire & Marine in the Svea for marine insurance on this cannery and supplies belonging to the Alaska Portland Packers' Association?

"A. Let me see that again, please. No, sir, we did not insure marine insurance.

"Q. What does that slip mean?

"A. That is the Marine Department policy.

"Q. That is the Marine Department policy; that is not marine insurance?

"A. Not necessarily.

"Q. What was that policy you re-insured?

"A. This policy was a policy covering for $50,000 on tin, tin cans, etc., on the premises of the Alaska Portland Packers' Association at Bristol Bay.

"Q. Mr. Brown, will you state that that re-insurance that you issued there was not on marine and fire?

"A. Will I say what?

"Q. Will you state that it was not on marine and fire together?

"A. Yes, I will state that.

"Q. Wasn't the intention of that policy to re-insure the St. Paul on its marine policy issued to this very company?

"A. No, sir.

"Q. What does that mean?

"A. This means this Svea Insurance Company assumed a portion of the liability of the St. Paul Fire & Marine Insurance Company on the fire risk on the stock described herein in the cannery.

"Q. And you will state that that don't refer to any

marine insurance that was on any of the property of the Alaska Portland Packers' Association in that year?

"A. Impossible, sir. And under its charter the Svea Company cannot write that insurance.

"Q. I want you to tell the jury whether it don't.

"A. Whether it covers marine?

"Q. Or marine and fire?

"A. Yes, covers absolutely fire.

COURT: It covers the fire part of the marine policy?

"A. Yes, sir.

"Q. The policy that was issued, then, was a marine and fire policy and you re-insured the fire part of it with the knowledge that the marine was on there?

"A. No, sir, I had no knowledge in issuing this policy that the marine was on there.

"Q. Will you swear that wasn't here, that there was no marine insurance involved in that?

"A. I cannot swear that; I know nothing about it.

"Q. Might have been?

"A. Might have been, yes.

"Q. I would like to have that marked for identification, not introduce it at the present.

Marked "Plaintiff's Exhibit 64 for Identification."

"Q. I will ask you, Mr. Brown, to look at this document purporting to have been issued to the Agricultural Insurance Company in July, 1906, and state what that is—whether you issued it from your office?

"A. Yes, sir.

"Q. Now, at the time that that policy was issued, will you kindly tell the jury—read to the jury, rather, the slip attached having reference to the marine policy of the St. Paul, or insurance in the Marine Department of the St. Paul.

"A. (Reading). "It is understood and agreed that this policy re-insures the St. Paul Fire and Marine Insurance Company, on their interest as insurers, under their Marine Department Policy No. 32179-32180 and or open cover No. 602 and not as originally written."

"Q. Now, at the time that that policy was written by you was the open cover shown to you?

"A. No, sir.

"Q. Why, then, is the language put in there "not as originally written" and reference had to the open cover?

"A. That I don't know.

"Q. Isn't it fair to presume in due course of business in your office that the cover was shown to you?

"A. No, sir.

"Q. Why would you put this slip on there?

"A. This was evidently put on at the request of the St. Paul Fire & Marine Company.

"Q. You wrote up your policy?

"A. I have never seen this before.

"Q. Is that your firm's signature to the policy?

"A. Yes, sir.

"Q. Do you dispute it was issued by your firm on behalf of the Agricultural Company?

"A. I do not.

Mr. CAREY: I will offer this policy in evidence, Your Honor, and also the other.

Mr. CAMPBELL: I should like to see it; I have no objection to the first one.

COURT: Let me see the second one.

Svea Policy marked "Plaintiff's Exhibit 64."

Agricultural Policy marked "Plaintiff's Exhibit 65."

"Q. I will ask you to look at this document purporting to be a policy from the Globe & Rutgers Company issued in July, 1906, bearing the signature of Edward Brown & Sons, General Agents, and state whether or not you issued that one?

"A. Yes, sir.

"Q. Does that bear the same rider or slip as the other two policies to which your attention has been directed, bear?

"A. Yes, sir.

"Q. That was issued by your firm?

"A. Yes.

"Q. On the property that belonged to the plaintiff?

"A. Yes, sir.

"Q. In Alaska?

"A. Yes, sir.

"Q. Cannery and supplies?

"A. It was issued as a re-insurance on the St. Paul.

"Q. At the request of the St. Paul Fire & Marine Insurance Company?

"A. Yes, sir.

"Q. The Marine Department thereof?

"A. Yes, sir.

JUROR: That also was for the fire portion of the risk only?

"A. Fire.

"Q. At the time you issued that policy, do you remember whether the cover was shown to you?

"A. I don't know.

"Q. That cover might have been a cover of fire and marine together?

"A. If there was such a cover, yes.

"Q. And you re-insured the fire part of it if such a cover existed ?

"A. Yes, sir.

"Q. And you did it with a knowledge of the marine insurance also?

"A. Not that I know of personally.

"Q. Not that you know of personally?

"A. Nor do I know it was ever shown in the office.

"Q. Will you swear that is not the case?

"A. What is not the case?

"Q. That your office or your company at that time did not have knowledge when you issued that policy that there was marine insurance in the cover form that was shown to you?

JUROR: I think you said this was the fire portion you re-insured?

"A. Yes, sir.

JUROR: Therefore they must have known there was both?

"A. Yes, sir, if I saw that.

JUROR: Whoever issued the policy must have known?

"A. Yes, sir.

Mr. CAREY: We offer this in evidence.

Mr. CAMPBELL: No objection.

Policy marked "Plaintiff's Exhibit 66."

JUROR: You mean you would have avoided that policy if you had known it the same as you are at present?

"A. You understand this is an entirely different transaction from a direct insurance. This has nothing to do direct with the assured. This deals only as a re-insurance of another company and in case of a loss we would not settle with the assured at all. We would settle with the other company.

JUROR: In case there was other direct fire insurance would you invalidate it the same as this time?

"A. If the other was other concurrent insurance, it would, certainly.

Mr. ALLEN: So you issue all of your insurance policies in your office with the mental reservation you would question that if any such thing occurs, even ance would you invalidate it the same as this time?

Mr. CAMPBELL: The policies speak for themselves—no endorsement upon the face of the policies.

Mr. ALLEN: We contend that the good faith of the witness is subject to investigation by this jury.

"Q. You represented the Svea too?

"A. Yes, sir.

"Q. I wish you would look at that policy. State whether or not that company is in the same catagory

as these other policies you issued?

"A. This does not cover the same risk.

"Q. What risk does that cover?

"A. This covers on the plant of the Columbia River Packers' Association.

"Q. That is another policy then that you issued to another company in that year on the same plan of insurance which bears the same sort of a rider to the effect you re-insure the St. Paul Fire & Marine Insurance Company under the Marine Department of the St. Paul?

"A. Yes, sir.

"Q. Is it fair to presume that the cover from that policy was shown to your office at the time?

"A. It was not necessarily.

"Q. If there had been other fire insurance that was not concurrent you could have avoided that policy?

"A. I don't say anything of the kind.

"Q. What do you mean by the statement you could have avoided under certain circumstances Mr. Hack asked you?

"A. I said if there was direct insurance issued by fire companies with this other insurance on, this marine insurance on in a marine form, those policies would be avoided if the marine policy and the fire policy was not concurrent.

"Q. So that would have avoided this policy?

COURT: This is on re-insurance policies?

"A. Yes, sir.

Marked "Plaintiff's Exhibit 67."

* * * * *

"Q. You say that M. C. Harrison & Company was paid a commission of 15 per cent?

"A. Yes.

"Q. Who paid it to them in your office?

"A. I presume the cashier.

"Q. Then you don't know personally what the amount was?

"A. I know what the commissions paid on that business are.

"Q. You are testifying from custom?

"A. Yes, sir.

"Q. Haven't you got a custom down there also that you can kite around a little and give a man a little bit more commission than the ordinary man gets —a little bit more?

"A. No ,sir, we haven't.

"Q. Will you swear of your own knowledge that you didn't give Mr. Harrison 17½ per cent commission?

"A. No, sir, I wont swear it. I will tell you the circumstances if you desire.

"Q. I want to know what you know about it. You have testified to the jury that you gave him 15 per cent. Now it appears the cashier sent him a check and you don't know what was paid.

"A. The commission paid—

"Q. Where are your books?

"A. The commission paid, authorized to be paid to brokers on business is 15 per cent. When Mr. Har-

rison sent in his Alaska business it was understood in the first place that we were to pay a portion of the expense of the telegrams. The arrangement wasn't very satisfactory to either of us and we made an arrangement based on the expenses of the year before, to allow him 2½ per cent additional on that amount. There was no subterfuge or kiting or anything you say, it was a legitimate transaction.

"Q. That is not responsive to the question. What I wanted to find, if possible, was what you knew—how much commission was paid to Mr. Harrison?

"A. I would be willing to swear that the commission paid—

"Q. But you didn't pay it yourself?

"A. No sir.

"Q. Did you keep books with Mr. Harrison?

"A. I kept it in our brokers' account.

"Q. Where are those books?

"A. The sheets are on that desk.

"Q. You haven't the books here?

"A. No, sir.

Mr. CAMPBELL: The excerpts are here.

Mr. ALLEN: We wont take your word, we want to see the books.

"Q. What sort of insurance men belonged to this board? I don't mean their character, but what business were they in—brokers and agents and the like?

"A. Which board?

"Q. The Board of Insurance Brokers.

JUROR: Fire underwriters.

"Q. Fire underwriters is the word, I understand.

"A. The Board of Fire Underwriters of the Pacific—

"Q. Who composed that Board?

"A. The companies.

"Q. By whom are they represented on that Board?

"A. Their principal representative wherever they may be located.

"Q. That is to say, by their managers and general agents?

"A. General agents.

"Q. Who composed this other board—of lesser lights?

"A. That is the Broker Board.

"Q. What composses that?

"A. The brokers of San Francisco.

"Q. Are there any men belonging to that Board that also are underwriters?

"A. Yes, I think there are one or two.

"Q. So that there is not any class distinction between the two boards—the personnel of the two boards?

"A. Oh, yes.

"Q. I mean, that a man may belong to both?

"A. No, sir.

"Q. Can an underwriter belong to the Brokers' Board?

"A. No, sir.

"Q. Can a broker belong to the underwriters?

"A. No principal member of the company can belong to the Brokers' Board.

"Q. Cannot a broker belong to the Underwriters'

Board if he is agent of the company?

"A. No sir.

"Q. He cannot?

"A. No sir.

"Q. So there is nobody belongs to the Underwriters' Board except the principals of the companies?

"A. The representatives named by the companies for that purpose on the coast.

"Q. You knew the members of both boards, didn't you, at the time this insurance was written?

"A. What?

"Q. Were you acquainted with the membership of both boards?

"A. Very largely, yes.

"Q. Mr. Harrison didn't belong to either, did he?

"A. No sir.

"Q. He was the agent for the St. Paul Fire & Marine?

"A. He was agent for the Marine Department.

* * * * *

"Q. Mr. Brown, want to ask you whether or not you ever saw this paper which I hand you?

"A. No sir.

"Q. This purports to be a marine contract, or at least an application of the Alaska-Portland Packers' Association.

Mr. CAMPBELL: I can't hear a word you say.

"Q. Beg pardon; this purports to be an application of the Alaska Portland Packers' Association for insurance; it isn't an application to your company, however, I merely call your attention to it for the pur-

pose of asking you about your custom or your practice with reference to these policies which were shown you before lunchtime.

"A. There-insurance policy covers the other company, it is very seldom that we see the original contract.

"Q. Well, is it usual for the cover to follow the contract?

"A. What is that?

"Q. The original cover—to follow the original contract in its terms?

"A. There-insurance policy covers the other company, so far as the liability of that company is concerned, as it is expressed on the policy.

"Q. Now, what would you say about a combined cover on marine and fire which was then being issued by the St. Paul Fire & Marine covering risks of this fire and marine in the same risk?

"A. What year is that?

"Q. 1906. You knew they issued that kind of insurance, didn't you?

"A. I had no direct knowledge of it at all.

"Q. You knew of it as a custom of the St. Paul Fire & Marine business, did you not?

"A. I know absolutely nothing about the marine business.

"Q. Did you not know that the St. Paul Fire & Marine wrote covers for insurance including both fire and marine in the same risk?

"A. As I said before, I know nothing about ma-

"A. No, not to my direct knowledge, no.

"Q. Did you ever see—are you not aware that in

these covers of insurance which were issued, and concerning which you issued this re-insurance, that there was not only provision for fire and marine cover, but that they contained substantially the same provisions that this form of policy that you issued contained, with reference to the following, that is to say, that in ascertaining the amount of salmon existing at the time of the loss, if any, in the cannery or on the wharves prior to being laden on board of the vessel, the value of $4.00 per case was fixed—or $4.50, as the case might be—on the salmon actually packed, lacquered, labeled and cased? Wasn't that the custom in that sort of insurance?

"A. As I said before, I know nothing about marine insurance. I have never seen a contract of that kind before.

"Q. Now, how does it come you would write re-insurance on what you say was the fire portion of the risk like that, and not know whether it included any marine, or was issued under a contract like this?

"A. Because our companies were interested only in the fire and not the risk.

"Q. Didn't you know, at that time, that the St. Paul Fire & Marine Insurance Company had two departments—marine and fire?

"A. Yes sir.

"Q. And didn't you know, and don't you know now that that cover that was presented to you was a marine cover, or a marine and fire together?

"A. I don't know that any cover was presented to us.

"Q. Will you swear that it was never presented to you?

"A. I wont swear that, no.

"Q. It might have been?

"A. It might possibly have been but I have no recollection of it at all.

"Q. Then if it was presented to your office for re-insurance, in due course of business, you did write risks of that character?

"A. My notion is that was never presented to our office. We make no inquiry about this at all; when we are asked to cover a certain portion, or a certain re-insurance on a certain portion of a risk, we make no inquiry of it at all.

"Q. That is at the time you don't make any inquiry about that. You write the re-insurance irrespective of the original cover, and it doesn't occur to you to raise this objection unless suit was brought?

"A. That is way back in 1906.

"Q. That makes no difference; it is the custom for years previous.

Mr. CAMPBELL: I object to that—seven years ago.

Mr. ALLEN: Our idea of that was, if he wrote this re-insurance with knowledge that it covered on both marine and fire, it goes to the question of whether or not he knew anything about what was done subsequently—following the same plan.

Mr. CAMPBELL: Re-insurance or direct insurance?

Mr. ALLEN: This man was the general agent."

* * * * *

On Re-direct Examination the witness testified:

"Q. Will you state whether or not it is a custom for your companies to generally re-insure other companies?

"A. Yes.

"Q. In making such re-insurance—taking such re-insurance, will you state whether or not you ever made any inquiry as to the character of the original policy which you are re-insuring?

"A. No. That contract——

"Q. Will you state whether or not your company has any authority to cover a marine risk in any of these companies?

"A. It has not.

"Q. Purely a fire company?

"A. Yes. No, I will change that. The Agricultural Insurance Company now has, since about the first of the year—the first of this year—authority to cover marine insurance. Before that time it had not. Its charter was amended at that time.

"Q. Mr. Brown, do you know who are the general managers of these three companies?

"A. Yes.

"Q. Will you kindly state them.

"A. The Agricultural Insurance Company, the president, Mr. W. H. Stevens, is acting general manager.

"Q. Where is the Home Office?

"A. Watertown, New York.

"Q. And the Globe Rutgers Insurance Company?

"A. Mr. E. C. Jameson.

"Q. And the Home Office?

"A. And Mr. Candee, Vice President of Acting Underwriters, manages.

"Q. Where is the Home Office?

"A. New York.

"Q. And the Svea?

"A. The Svea Insurance Company, Mr. Ernst Bring, is the managing director.

"Q. Is there any other matter that you wish to testify to?

"A. No.

Re-cross Examination.

"Q. In writing these policies, I understand they they are sent out to you in blank by these dfiferent companies, with the names of the eastern managers stamped upon them.

"A. Yes.

"Q. You issue them for the companies and sign them Edward Brown & Sons, General Agents?

"A. Yes, sir.

"Q. The same as you do other documents in connection with the business—

"A. Yes."

* * * * *

JUROR: Mr. Brown, I believe you said that you had frequent occasions to re-insure policies.

"A. Yes, that is a fair proposition of our business in San Francisco.

JUROR:

"Q. And it is customary to re-insure without any

examination of the policies?

"A. Yes, if I may explain the details of that. It is customary for instance, for a company to write a policy for a large amount, we will say for $50,000.00, of which their net retention will be not to exceed perhaps $10,000—the warehouse risk; they will take that excess of $40,000 and place it with other companies as re-insurance. Now, the method for that is the clerk from the other office comes into our office there and asks us if we will take so much re-insurance on a certain risk; we say yes and give them a covering for that, and in due time, they send us in an application upon which our policy is issued and sent to them. In case of loss, we have no direct dealing with the insured in any way; we settle with that company on the basis of their adjustment with the assured, and we do not see their original contract; simply go on the application which is sent in to us for writing the policy.

JUROR: Then you take it for granted that their application reads the same as their policy?

"A. Yes sir.

JUROR: In case it doesn't, what then?

"A. In case it doesn't, in case of loss, we would not be liable under our policy.

JUROR: Do you feel yourself negligent by that or not?

"A. No, it is a matter of custom for years. It is a matter of good faith between offices.

"Q. Didn't you have a declaration from the St. Paul Fire & Marine Insurance Company when you wrote this policy in 1909?

"A. We undoubtedly had applications from them.

"Q. Declarations?

"A. No, not declarations—very different from declarations. Applications and declarations are very different. Applications come into the office, and policies are written from that.

"Q. Don't applications or declarations, whichever it may be—aren't they required to state the character of the original risk—the portion you are insuring?

"A. The application——

"Q. Answer that yes or no.

"A. Yes.

Re-direct Examination.

"Q. Explain it now.

"A. The application that goes in is supposed to be —presumed to be and is in practically every case— I never heard of a case where it hasn't been—an exact copy of the written portion only—of the policy of the company it is re-insuring, and from that application, we issue our policy."

* * * * *

Mr. HARRISON, being recalled in rebuttal, testified as follows:

(Questions by Mr. CAREY):

Mr. Harrison, I wish to ask you whether or not— I will ask you to state exactly as you remember it, the converstation had between you and Mr. Jolly at San Francisco prior to the time that Mr. Jolly came up here.

Mr. CAMPBELL: If the Court please, this was gone into on direct examination.

Mr. CAREY: Yes, I asked in a general way about it, but not the particulars of it. It didn't seem to be important at that time, but it does now.

"A. Mr Jolly walked into my office with his note book open in his left hand, and his pencil in his right, and said: "Are you Mr. Harrison?" I said, "Yes, sir." "My name is Jolly, and I am the adjuster for this Alaska Portland Packers' Association loss." I said, I didn't know any adjuster had been appointed. He said, "yes, sir, I have been appointed, and I want to get the information about the Lloyd insurance." I said, "Mr. Jolly, that is something that is in the possession of the assured. I am not his duly authorized agent, and I don't think that would be doing my duty if I gave that information without his instructions." I said besides, "I would like to know where your authority comes in." Well, he says, "the insurance companies have all appointed me." I said, "Have the Lloyds appointed you?" "No." He said, "No, all of the companies in San Francisco." I said, "The St. Paul Fire & Marine has a very considerable amount on this risk, and I don't think I have made any appointment and I am sure nobody can speak for me." Well, he says, "All the fire companies appointed me." Well now, I says, "That is different." Well, he says, "I am going to adjust the loss." Now, I said, "Mr. Jolly, so far as the marine department of the St. Paul Company is cincerned, I am the general agent for it."

"Q. You will have to speak a little louder.

"A. So far as the marine department of the St. Paul is concerned, I am the general agent, and I want

to tell you that I am either going to appoint an adjuster myself, so far as I am concerned, or else I am going to adjust it myself, so far as the St. Paul is concerned. I have made no appointment. Now, so far as giving you the information concerning Lloydes' I shall have to refer you to the assured, or wait till I get instructions from the assured to give you the information."

"Q. What is the fact, Mr. Harrison, as to whether or not you showed Mr. Jolly the cover notes of the Lloyds' insurance, and the St. Paul Marine Insurance upon this loss at this time?

"A. At that time I didn't show him the St. Paul. I didn't show him the Lloyds' because I didn't have it. I didn't tell him the amount of either one. I didn't tell him the amount that would be declarable to Lloyd nor did I tell him much more about it at all. I simply told him that I wasn't authoried, and I wouldn't give it to him, but that I was going to Portland, and be told me that he was. I said, "Very well, get it from the assured." I came to Portland, I think I preceded Mr. Jolly. I don't know whether one day or two, but at any rate while I was in Portland, Mr. Jolly arrived, and I think that his testimony concerning the way he got to Mr. Warren's office is correct. I went up to the hotel with Mr. George Warren and brought Mr. Jolly down to Mr. Warren's office. Mr. Warren's statement as to his loss on the salmon was presented there at that meeting. His statement as to his loss on supplies, which I am very sure was $21,659, was presented; the cover note of Lloyds' was present-

ed to Mr. Jolly—shown to him; Mr. Warren's copy of the St. Paul cover note was presented and shown to him and read off; He wanted to take it.

JUROR: The St. Paul—was that the excess cover note.

"A. The St. Paul $41,165 excess, and the Lloyds' cover for 36750 pounds.

JUROR: Amounting to how many dollars?

"A. Amounting to $177,135 practically.

COURT: You mean the Lloyd cover?

"A. That very document there.

COURT: The original document?

"A. The original document which was then in Mr. Warren's possession and not in my possession, in San Francisco.

COURT: You say it was shown to Mr. Jolly the first day?

"A. That document was shown to Mr. Jolly the first day he went to Mr. Warren's office, and also the St. Paul cover note that Mr. Warren held as his protection. They were both shown. He read them both over. He wanted to take the two documents. Mr. Warren declined to give them up. I said, "I will make you copies, because I have the blanks in Mr. Sargent's office which will fit the St. Paul cover note" and copies of these documents were made and furnished to Mr. Jolly, I think the next day. I don't know whether I handed them to him in Mr. Sargent's office or in Mr. Warren's, but in one of the two. Copies of both of these documents were given to him, except the names attached to the Lloyd cover were not

copies. I didn't consider this necessary.

JUROR: The amount was stated—the 36,000 pounds?

"A. 36,750 pounds were stated, and sitting there at the desk with these gentlemen, Mr. Warren—the three of them—and Mr. Jolly, I figured for him the proportion of the Lloyd insurance that would apply on that salmon at that time, and gave it to him.

"Q. Now, Mr. Harrison, Mr. Jolly says that he made some appointment with you at your office at 8 o'clock one evening?

"A. He did.

"Q. And you failed to come together?

"A. I don't remember the time, but it was one evening. I believe he came to my office twice.

"Q. Where was your office at that time?

"A. It was in Mr. Sargent's office. I was stopping with Mr. Sargent. We came over from the house, and were delayed for some reason—I am not sure but it was on account of the draw. We got there a few minutes late, and Mr. Jolly was pacing up and down the hall, because he couldn't get in the door. We opened the door and he came in and we discussed at that time the details of this $21,659. Mr. Jolly pointed out certain things that he would not allow. He mentioned that the metals were not a loss, and he wouldn't allow for them; that the belting he would not allow for, because it belonged to the machinery; the pipes he would not allow for, because it was a part of the building; and I believe the hose—or some way. I think he objected to a barrel of lubricating oil, and a

few items of that kind, and at that date—at that meeting, I made a memorandum of Mr. Jolly's objections, and I think the next day, or at another meeting, I made another memorandum and went to Mr. Sargent's stenographer, and dictated the memorandum of Mr. Jolly's objections, and I have those original documents now.

"Q. Where are they?

"A. I think they are in my pocket.

"Q. I wish you would produce them (witness does so).

"A. The insurance at that meeting was not discussed. I never discussed the insurance any more with Mr. Jolly from the date that we showed him this cover note until we both returned to San Francisco. I did have another appointment to see Mr. Jolly at another time, although we had agreed between us—rather he said he would have to take up certain items with his general manager before he could do anything more, and I said to him that it was my understanding in placing the insurance that all the buildings were covered, and that the contents of all the buildings were covered, and that all the supplies that were shipped north were covered. That I would also see the agents of the companies before I would accept his ruling on any of these points in the adjustment of this loss, and we arrived practically at a status quo. We could not proceed any further. The insurance was not discussed any more after we first showed him the documents in Mr. Warren's office, and I gave him a copy.

"Q. Did Mr. Jolly make demand for the original policies?"

"A. He did."

"Q. What did you say to him?"

"A. My recollection is I said that the policies had not been issued. He repeated he could not adjust that loss until he had the policies. I said 'Very well, then it will be a long time being adjusted, because it will take at least a month to get these policies.' "

"Q. As a matter of fact, had those policies been issued at London yet?"

"A. They had not. The policies could not be issued until the assured declared the amount of salmon packed for the season." * * * * * *

"Q. —when these memoranda were made by you, did Mr. Jolly make any claim at that time that his insurance was not concurrent insurance with the other insurance, or did he say that there was any claim that the company ought not to pay on the ground that you had taken out this marine insurance, or anything of that kind?"

"A. No, sir."

Mr. CAMPBELL: We object to this as immaterial. There is no showing that this man had a right to waive the policies.

COURT: The testimony will go in, subject to your objection.

"A. Mr. Jolly never mentioned concurrency or non-concurrency."

"Q. Is this memoranda in your handwriting."

"A. It is."

"Q. When was it made?

"A. I can't tell you the date, but these two memorandums were made at the meeting with Mr. Jolly in Mr. Sargent's office one evening.

"Q. That was the same meeting I am talking about?"

"A. The meeting, yes, sir, this memorandum here ——."

"Q. The typewritten memorandum you say was made up the next day?"

"A. It was made, I think after—immediately after a subsequent meeting. Mr. Jolly was either in my office in the day time, or I met him in Mr. Warren's office—I can't remember which, but at any rate, without having made any pencil memoranda of his position, I immediately went to Mr. Sargent's stenographer, and dictated this document, which I corrected in my handwriting immediately after she wrote it, and attached the three together, and kept them that way."

"Q. Now were any other objections made to Mr. Warren's loss on supplies, other than what you have noted on the memorandum?"

"A. Not to me."

"Q. In any of these discussions, at which you were present, was there any other claim made by him objecting to this loss, than what you have noted down here?"

"A. No, sir, except that he insisted both on the first occasion, and possibly on one more, that he could not adjust that loss without the policies—that

he could not adjust the loss on the basis of the covering note; that he wanted the printed terms of the policies, which I told him I could not get at that time. I must wait until the policies came from London, and he remarked that he wouldn't undertake to adjust loss on the basis of policies issued after the loss."

JUROR: Does adjusting the loss include apportioning the loss?

"A. Yes sir."

JUROR: Then he couldn't?

"A. Yes, he could."

JUROR: If he didn't know the terms of the various policies, he couldn't apportion the loss among them, could he?

"A. The cover note provides on its face, Mr. Wheelwright, the proportion declarable under that cover ,and a man who cares to could go into the mathematical calculation of the proportion declarable to each individual company, and each individual underwriter on that cover. When the proportion declarable to that underwriter is known, then he has the exact amount of insurance."

JUROR: Then the facts that he wanted when he asked for the policy were really made known on these covers so it was possible to adjust?

"A. It was possible to adjust on the basis of this cover note. It was possible to adjust the loss."

JUROR: It was perfectly practicable to make out the amount of the adjustment and the apportionment under the documents he had copies of, and he had seen the originals?

"A. I am stating my opinion in this case——."

COURT: You mean he could apportion the amount of insurance?

"A. He could apportion the amount of insurance and the loss. I did so myself."

"Q. He didn't represent as an adjuster, the Lloyds and St. Paul?"

"A. No, he only represented about one-sixth of the insurance, and I was astounded that any underwriter in San Francisco would undertake to appoint an adjuster, and not call into conference five-sixth of the insurance."

"Q. Now, please answer my questions as I ask them. I have a point in mind——."

JUROR: You say these cover notes are issued first, and that Lloyd does not issue a policy in fact until after the fire? Is that true?"

"A. That is true—well no. I beg your pardon. I will correct that. Not necessarily after the fire, but they do not issue the policy until the amount of the risk is made known and declared to them."

JUROR: In this case there was no policy—Lloyd policy issued?

"A. None at that time."

JUROR: Yes, and Mr. Jolly refused to adjust because he couldn't see the policy. That was the reason?

"A. He said he couldn't adjust the loss because he didn't have the printed policy. He was not satisfied with the cover note."

JUROR: I understood you to say the policy could

not be issued from Lloyds until the risk was determined.

"A. It could not."

JUROR. A mathematical impossibility.

"A. Physical impossibility. If a man is insuring the goods in his own place, he knows the value of the goods."

JUROR: I can't see how he can adjust until he knows the loss, and on the other hand, he cannot get the loss until he has adjusted.

"A. I am trying to explain the method, and why the policies cannot be issued. The underwriter agrees only to charge premium on the actual amount of the risk."

JUROR: Now, you are talking of marine insurance.

"A. Marine insurance, although fire is included, and is determined in the same way. If a man is shipping salmon from here, he knows precisely to a dollar how much he wants to insure, and he doesn't take a cover, but asks for a policy and pays the premium. But, if he is shipping from Bristol Bay, he sends a ship up there—'please get a cargo of salmon.' He doesn't know how much that ship is going to get. He doesn't want to pay a premium on $250,000 and have his ship come down with $125,000, and not be able to get a return of the premium, and therefore he says to the underwriter, 'Please make me a cover only, under which you will protect me for all the shipped goods, not exceeding $250,000, and I will declare the amount the ship gets when I know it."

"Q. The question I wanted to ask was this: I did ask you whether Mr. Jolly represented either of these marine companies in this adjustment, and you said no?"

"A. No, sir."

"Q. He represented only the fire companies and policies?"

"A. Fire companies amounting to $27,500 out of a total of ——."

"Q. Now, in these policies—the fire policies—there is an express provision, is there not, as to the liability, or the amount of the proportionate liability, of the insurance company?"

"A. Yes, sir."

"Q. And that is not based either on what would be paid by any Lloyd company or Marine company whatever?"

"A. No, sir."

Mr. CAMPBELL: The policies speak for themselves.

COURT: The policies speak for themselves, and apportioned according to ——

Mr. CAMPBELL: The total amount of the insurance.

"Q. The only question then for an adjuster like Mr. Jolly to find out was what the amount—the total amount of the insurance would be, so far as their insurance was concerned."

"A. That is correct."

"Q. And if he was advised of that, and shown the cover notes, would he then know how much that in-

surance was?"

"A. Undoubtedly.

"Q. Did he require the policies in order to determine that?"

"A. No, sir."

"Q. Now, if there is any other question in regard to that——."

JUROR: What is the exact difference in reading or wording of the covering and the policy."

"A. The cover doesn't undertake to mention any terms of insurance at all, except in the shortest possible form."

COURT: Simply an agreement to issue a policy later.

"A. Simply an agreement to issue a policy and that policy may be—the kind of policy may be described by a very short term, for instance, that cover says, 'insurance free from partial loss and particular average, etc.' Now, in insurance parlance that is known as an F. P. A. policy. That heans a great deal. The St. Paul cover only says F. P. A." * * * *

* * * * *

"I will show you, Mr. Harrison, Plaintiff's Exhibits Nos. 65, 66 and 67, being the policies respectively of the Agricultural, the Svea and the Globe & Rutgers Fire Insurance Companies issued in 1906, which were identified by Mr. Brown when he was upon the witness stand. I wish to inquire whether, on the occasion of that re-insurance, you had any understanding with Mr. Brown as to what the character of the insurance was which he was re-insuring on these policies?

Mr. CAMPBELL: If the Court please, we will renew our objections against incompetency. By the terms of the policies the conditions could only be waived by a written endorsement.

COURT: Very well.

"A. My recollection is that I did, and that I had considerable difficulty in fixing it.

COURT: Those are the re-insurance policies you have now?

Mr. CAREY: Those are the re-insurance policies.

"Q. What was the original insurance upon this property?"

Mr. CAMPBELL: Same objection.

COURT: Same ruling.

Mr. CAMPBELL: Exception.

"A. The original was the contract I had made with Mr. Warren."

"Q. State generally whether that was fire and marine insurance together or not.

"A. The contract——."

"Q. You need not state the contents of the contract, but just generally as to the character, whether it was fire and marine?"

"A. Generally, the original——."

Mr. CAMPBELL: It is understood my objection runs against all this testimony.

COURT: Certainly.

"A. —was both covering fire and marine. Mr. Brown insured the fire portion."

"Q. Did Mr. Brown know about that?

"A. He did. It took a great deal of explanation.

"Q. I will ask you whether the original contract that you had with the Alaska Portland Packers' Association for this insurance was shown to Mr. Brown at the time he re-insured?

"A. I would not say that the original contract was shown, but either the original or a copy of the terms of the original, was shown.

"Q. Now, at that time, did you have any policy of the Marine Company—St. Paul Fire & Marine or Lloyds, or was it simply a cover note?

"A. It would be a cover note.

"Q. Has Mr. Brown ever to your knowledge objected to taking fire insurance where there was also marine insurance on the same risk?

"A. Well, I would not say that he just exactly objected, but I did have a good deal of difficulty in fixing this particular risk.

"Q. I am speaking now generally as to the character of business between yourself and Edward Brown & Sons, General Agents for the several insurance companies, as to whether or not there was any objection made by that agency in taking insurance where you were having that concern issue fire policies, other companies issuing marine policies on the same risk?

"A. I don't think there has been any objection since the matter was first explained to him fully, although that class of business doesn't cover such a very large number of risks.

"Q. Well, when this re-insurance was issued—I will just withdraw that—I will call your attention

to the slip attached to the policies of re-insurance which we have just been speaking of, that is, Plaintiff's Exhibits 65, 66 and 67, and ask you whether the slip, the yellow slip, was shown to Messrs. Brown & Sons at the time?

"A. The yellow slip?

"Q. Yes, of the issuance of this policy.

Mr. ALLEN: That is a part of the policy.

"A. I cannot say whether I would have that yellow slip or not. My recollection—no, I haven't any recollection of the yellow slip at all.

"Q. Who issued this yellow slip attached to the original policies of insurance?

"A. They issued it, for they signed it. The form appears to be a form coming from Christensen, Edwards & Goodwin.

"Q. But the name Edward Brown & Sons——

"A. Is the signature.

"Q. Signed with a rubber stamp with some initials.

"A. Agricultural Insurance Company signed Edward Brown & Sons—it seems to be F. M. I don't know who that is.

"Q. This slip is, "Other re-insurance permitted. Subject to the same risks, valuations, conditions, adjustments, modes of settlement, endorsements and assignments, changes of interest, or of rate as are or may be assumed or adopted by the re-insured and loss, if any thereunder, is payable pro rata with the re-insured, and at the same time and place." Now, the re-insurance in question, then, was subject to the

same provisions as the original policies?

"A. Absolutely so.

"Q. Followed the same course as to the original insurance?

"A. I don't know—I don't know whether I am permitted to say that—if I could make some explanation on the re-insurance business, if it were permitted—

"Q. I will ask you whether you explained to Edward Brown & Sons the conditions of your original covers?

"A. I did."

* * * * *

On cross examination the witness testified:

"Q. How long have you been in the business?

"A. About eighteen years.

"Q. Eighteen years?

"A. Yes, sir.

"Q. Ought to become pretty familiar in that time?

"A. I have learned many things.

"Q. Written thousands of risks?

"A. I presume I have.

"Q. Thousands of policies passed through your hands?

"A. Yes sir.

"Q. This re-insurance clause—this yellow slip attached to the exhibit just shown you, is the usual re-insurance clause attached to all policies, is it not?

"A. I am not as familiar with fire insurance clauses as marine insurance clauses, but I think that that is about the usual clause.

"Q. Now, you have a very distinct recollection, you say, of showing to Mr. Brown the original St. Paul policy and explaining it to him in 1906?

"A. No, I haven't a very distinct recollection of showing the original policy.

"Q. Of explaining to him the character?

"A. Of explaining to him the character. I say I explained to Mr. Brown. I wont be positive I explained that to Mr. Arthur Brown; that is a little too long.

"Q. I thought you just testified—identified Mr. Arthur Brown in court this morning.

"A. I identified Mr. Arthur Brown on some things, but I said that my recollection was that practically all my dealings with that firm of that character had been with Mr. Arthur Brown.

"Q. So that you have no recollection at the present time of having explained this original St. Paul cover to any other member of the firm than Mr. Arthur Brown?

"A. I would not be positive I have not.

"Q. Have you a recollection of explaining it to somebody else?

"A. I can't be positive on that point.

"Q. Your recollection is not positive, and you can't recall explaining it to somebody else?

"A. I can't recall explaining it to anybody else, although I have talked on different occasions with Mr. Brown's brother and Mr. Gibbons.

"Q. If you can't recall explaining it to anybody else, can you recall explaining it to Mr. Arthur

Brown?

"A. I have some sort of recollection.

"Q. More or less vague?

"A. Not absolutely so. I remember of having a good deal of difficulty—

"Q. Now, Mr. Harrison, if it is possible for you at this time five years afterwards, to recall that you made an explanation of the original St. Paul cover, why can't you remember the man to whom you explained it?

"A. You see, that is pretty hard to give a reason why a man can't remember a thing.

"Q. But you do remember explaining it and you can't remember to whom?

"A. I think I explained it to Mr. Arthur Brown, because my dealings were chiefly with him.

"Q. Will you say positively now it was Arthur Brown?

"A. No, I can't be absolutely conclusive on that point.

"Q. What time in 1906 was it you explained this?

"A. I don't remember, Mr. Campbell.

"Q. Where was it—Where was the explaination made?

"A. At what place?

"Q. Yes.

"A. I can't tell you.

"Q. Can't think?

"A. No.

"Q. Where was Mr. Brown officing at that time?

"A. I don't know that.

"Q. Was it in San Francisco?

"A. Well, I don't even know whether it was in San Francisco or Oakland. I know I was traveling with my trousers in my boots and my flannel shirt on, climbing over rocks and dust.

"Q. If the explaination was made, it was made after that great conflagration, wasn't it?

"A. It undoubtedly was.

"Q. At a time when everything was in turmoil?

"A. Yes.

"Q. And the insurance men in San Francisco were crushed with business, including yourself?

"A. Well, I wasn't particularly crushed with business. I was crushed through the lack of business.

"Q. And crushed through taking care of losses?

"A. I was in very bad circumstances.

"Q. Very bad circumstances?

"A. Yes, sir.

"Q. And every insurance man in San Francisco was in the same condition, was he not?

"A. Some very much more involved than I was.

"Q. And yet you want to tell this jury you recall under those circumstances telling Arthur Brown or some member of the firm of Browns of the conditions of that original St. Paul cover, and yet you can't remember the time that you told it, and you can't remember the place you told it, and you can't say as to whom you did tell it to?

"A. I wont be absolutely positive to Mr. Arthur Brown, nor as to the place, nor as to the day, but I would feel fairly certain that it was before the issu-

ance of the policy. The issuance of re-insurance by a fire company of a risk written by a marine company is one of very rare occurrence indeed. I don't know that I ever had occasion to do that before, but that year the insurance market was in a terrible condition. It was almost impossible for me to protect my business and my customer, and I remember quite distinctly the amount of difficulty I had in securing my protection which was absolutely necessary. I remember also the amount of explanation necessary to the fire companies to whom I applied for this re-insurance in order to get them to agree to re-insure me.

"Q. Now, re-insurance is a very large part of the busines sin San Francisco, is it not?

"A. The fire companies re-insure each other constantly every day in the year, I presume—every business day.

"Q. I say the marine companies

"A. The marine companies re-insure each other every day in the year, but for a marine company to re-insure a fire company or a fire company to re-insure a marine company is something of exceedingly rare occurrance.

"Q. Something of rare occurrence?

"A. That is to say——

"Q. Isn't it common occurrence for a marine company to issue insurance upon a vessel or cargo on a vessel, and have it attach as against fire while the cargo is on the dock awaiting shipment?

"A. Exceedingly common.

"Q. Isn't it common in a port like San Francisco

for these marine companies to re-insure that particular risk on the dock with other companies?

"A. Not that I know of. I have been in the business a good many years, and I don't know that I have ever had occasion to do that once a year during that time.

"Q. Dont' you do it every month in the year?

"A. No, sir.

"Q. Don't the other companies do it every month in the year?

"A. I can't speak exactly for the other companies. If it is so it has not come to my knowledge."

HERBERT H. BROWN, being called as a witness on behalf of defendant, testified as follows: (Mr. CAMPBELL):

"Q. Mr. Brown, are you a member of the firm of Edward Brown & Sons?

"A. I am.

"Q. Were the firm of Edward Brown & Sons, general agents for the defendant insurance companies in these cases, to-wit: the Globe & Rutgers Fire Insurance Company, the Agricultural Insurance Company and the Svea Fire Insurance Company?

"A. Yes sir.

"Q. That is, in the suits brought in Portland by the Alaska-Portland Packers' Association against these three companies?

"A. Yes sir.

"Q. Were they general agents at the time of the issuance of the policies on which suit is brought?

"A. Yes, sir.

"Q. Did you have anything to do with the taking of that insurance by those three companies?

"A. I took the insurance.

"Q. Did you have any dealings with any person representing M. C. Harrison & Co.?

"A. Yes sir, I had dealings with Mr. Harrison himself.

"Q. Did you have any conversation with him with respect to this insurance?

"A. Yes sir, the matter was submitted to me.

"Q. One moment. Do you say that you did have?

"A. Yes sir.

"Q. Please state fully what was said between you.

"A. The matter was submitted to me by one of the clerks in the office because Mr. Harrison wanted us to place a certain portion of our portions of re-insurance with the Franklin Insurance Company. It was unusual.

"Q. Did he give any reasons for it?

"A. He was friendly to the Franklin Insurance Company. They did not write any direct business in the territory of Alaska, but they wrote re-insurance, and Mr. Harrison asked me if I would allow him to place a certain portion of our gross line with them, re-insuring our companies to a certain amount with the Franklin. I expressed my willingness in that respect to take our policies gross for certain sums and then re-insure the balance with the Franklin Insurance Company.

"Q. Do you know whether or not policies were issued?

"A. Yes sir, our policies were issued.

"Q. For the gross amount?

"A. For the gross amount, yes.

"Q. Was any re-insurance placed pursuant to that request with the Franklin?

"A. Yes sir, we re-insured with the Franklin as asked by Mr. Harrison.

"Q. Did Mr. Harrison ever state to you in any conversation that he was going to take out a Lloyds' marine insurance covering an incidental fire risk in the cannery?

Mr. WALL: I object to the question as leading.

Mr. CAMPBELL: Strike out the question.

"Q. State whether or not you had any knowledge that M. C. Harrison & Co., on behalf of the Alaska-Portland Packers' Association, or the Alaska-Portland Packers' Association itself intended to take out a Lloyds marine insurance covering an incidental fire risk on salmon in cannery, being the same salmon which was covered under your policies?

"A. No sir, I held no conversation with Mr. Harrison in that respect at all.

"Q. State whether or not any reference was made to any conversation you had with Mr. Harrison, or any employee of his office, or anyone representing the Alaska-Portland Packers' Association with reference to the taking out by the plaintiff of any Lloyds marine insurance covering salmon in the cannery, which salmon was covered by your policies.

"A. No sir, I had no knowledge of any other insurance in Lloyds or otherwise.

"Q. When did you first become advised of the fact that the Alaska-Portland Packers' Association had taken out a marine insurance policy at Lloyds covering an incidental fire risk on salmon in cannery, being the same salmon that was covered by your policies?

"A. The first personal knowledge I had of that was when the adjustment was started.

"Q. When was that with respect to the submission of the proofs of loss?

"A. I don't know, because I had nothing to do with that in the office, handling the loss.

"Q. Who does that?

"A. My brother, Arthur Brown.

"Q. Was your knowledge with respect to the issuance of the Lloyds insurance prior or after the fire at Nushagak?

"A. The first I knew about Lloyds was when it came up on the question of adjustment my brother spoke to me about it.

"Q. When was that with respect to the fire? Before or after?

"A. It was sometime after the fire.

"Q. Do you know if that was sometime after the proofs of loss had been submitted to the companies?

"A. No sir, I do not.

"Q. Who are the members of the firm of Edward Brown & Sons?

"A. Arthur M. Brown and myself.

"Q. State whether or not at the time of the payment of the premiums to you, you had any knowledge

of the fact that the Alaska-Portland Packers' Association had taken on a Lloyds marine insurance policy covering an incidental fire risk on salmon in the cannery, being the same salmon that was covered by your policies?

"A. I had not."

Mr. WALL: No questions.

GEORGE A. WARREN, a witness on behalf of plaintiff, testified as follows:

"Q. Then what was done by Mr. Jolly and yourself in arriving at all of these items?

"A. He had access to everything we had and figured out the losses from the books—invoices. He had the freedom of our office there for several days—gave him everything he wanted.

"Q. Did Mr. Jolly see your original books of entry?

"A. Saw everything that he asked for.

"Q. What is the fact as to whether or not you furnished him copies of what he required?

"A. Everything that he asked for, we gave to him.

"Q. Who were present besides yourself during this period while Mr. Jolly was there—during his visit?

"A. During his visit?

"Q. Yes.

"A. In the office?

"Q. Yes.

"A. My father was there; my brother was there; Mr. Daly was there; our regular office force.

"Q. Now what did Mr. Jolly call for?

"A. He called for—my recollection is that he called for—

Mr. CAMPBELL: We object to that question as being purely irrelevant and can't in any way tend to prove this loss or the value of the supplies which had been burned,—as to what Mr. Jolly may have called for.

Mr. ALLEN: The question of notice.

Mr. CAREY: We will show, if the Court please, that Mr. Jolly assisted in getting out these items and is familiar with them; the defendant knows all about these items.

COURT: Very well.

Mr. CAMPBELL: Save an exception.

"A. What was the question then?

"Q. The question is, what did Mr. Jolly call for and what was furnished him?

"A. He called for the various inventories, items, bills, etc.

"Q. Was this statement which you have produced here made up while he was here?

"A. Yes sir, almost——

"Q. What is the fact as to whether or not those items were furnished to Mr. Jolly?

"A. The items were furnished; the bills given to him; the actual list of the bills was made up afterwards; he had the original bills when he was there; he had everything he wanted to work with.

"Q. Are those the bills you have here on the witness stand?

"A. Yes sir. Mr. Jolly had everything we had in the office that he wanted. All he had to do was to ask for it."

* * * * *

FRANK M. WARREN, a witness on behalf of plaintiff, testified as follows:

"Q. Now, will you state whether or not the insurance companies sent a representative to Portland after that time to adjust this loss, who that representative was, and just what was done between you and the adjuster.

"A. They did, and that representative—I would not mention dates, because I do not burden my mind with dates, it was sometime the first of September—we showed him all we had in the office—books, papers.

Mr. CAMPBELL: Mr .Warren, just a moment. If the Court please, if this is going to the question of the character of proofs of loss we have no objection to it, but if it is going to the question of the estoppel, then we will object to it, on the ground that the terms and conditions of the policy have not been waived or estopped in accordance with the requirements of the policy by written endorsements on the face thereof.

COURT: Let the records go in as part of the proof of loss.

"Q. What was the name of the man?

"A. Mr. Jolly. D. J., I think his initials are.

"Q. About how long after you got this telegram did Mr. Jolly come to Portland?

"A. He came about the first week of September.

I would not confine myself to any date.

"Q. I don't ask you the exact date. About what time, I said. About the first of September.

"A. I suppose it was a week or ten days afterwards.

"Q. Is that the gentleman that is sitting here during this trial?

"A. That is the man, sir.

"Q. Mr. Jolly?

"A. Yes sir.

"Q. What did Mr. Jolly ask the insurer to do in behalf of the company?

"A. I don't know as I understand your question.

"Q. Did he ask you to produce the proofs of your loss, and to show what you lost, or what did he say?

"A. Well, I would not undertake to detail any conversation had with Mr. Jolly or any one else six months ago, or a year ago; but the facts are that he wanted to investigate it, and wanted our papers and our books, and anything that related to the fire, I understood, in a general way that he was supposed to adjust the case.

"Q. What did the company do with reference to complying with his demands?

"A. Did everything that he asked for, and offered him more than he asked for.

"Q. Now, give us a little more detail about that, Mr. Warren, if you please. Just tell us exactly what occurred between you and Mr. Jolly, as near as you can recollect.

"A. Well, I haven't anything definite until the

day before I left for San Francisco, but I have a memorandum that we had made up as a composite of the figures that had been given him. We had some disagreement as to metals. We had had a disagreement as to interpretation of a Lloyd policy. But before he left, I says, "Now, Mr. Jolly, you have got all these figures,"—I have the memorandum here"—says I, "We wont want to disagree about anything when we get to San Francisco. We want to know just where we are at. If there is anything more you want, it is here for you to see." And I took this memorandum and put this memorandum away. I checked it off so that I would be able to swear all the time, and I have it with me.

"Q. Before you get to that, Mr. Warren. How many days was Mr. Jolly here prior to the time you went to San Francisco?

"A. That I couldn't tell, because he was in and out, and adjusting on the fire loss on the building itself, and then I think he went away, and then he came back again. He was here so long, and he had the full range of the office, I didn't pay any attention to him; he went in and out and inspected the books.

"Q. About how long a period in all did his visit cover?

"A. I think, with the exception of what time he went away from here, he didn't go back to San Francisco until the last of the month.

"Q. So he was in and out of your office more or less during September?

"A. Yes sir.

"Q. And during that time, what is the fact as to whether or not he examined your books of account?

"A. He examined for the lumber, examined our bills, examined our charter, examined everything we had there. He was trying to find out how much the buildings cost, and he looked at our invoices; that is, this package of invoices has been in his hands two or three times—twice, I know, once in San Francisco and once or twice here. That has also been to San Francisco for other purposes. That is all I can remember about it.

"Q. Well, now, did he look over these books here that are in evidence in the case, this exhibit number one that was prepared by Mr. Daly?

"A. Mr. Daly was instructed by me to show him everything he had. The next question will be asked me did I personally see it.

"Q. Well, now, I just want you to tell what you know, and tell us all about it, Mr. Warren.

"A. Well, I know that all those books, as a matter of knowledge, as a business man would say, I know that all those books have been inspected.

"Q. (Cross) Well, did you see them inspected?

"A. Yes sir, I saw them inspected.

"Q. Now, did he make up any figures of this loss with you?

"A. That I don't know, only I gave him the figures as I had it. He was noting down figures all the time. Finally when he come to go away, I said, "Now let us go over those figures that you have, that have been given you." And I noted them, and he says

"Yes, I have got them." And I checked it off on my memorandum.

"Q. Now, let us see your memorandum.

"A. This is my memorandum, and attached to this is two or three copies of telegrams from my son George A. Warren with reference to some inquiries that were made of me when I was at his office in San Francisco. Other than that, this is the memorandum that I checked.

"Q. We will get to the San Francisco part in a few minutes. I just want this Portland part.

"A. I just showed these attached to it, that is all.

"Q. You keep that. This memorandum is in typewriting.

"A. Yes, sir.

"Q. Will you state whether or not a copy of that was given to Mr. Jolly while he was here?

"A. I don't think a copy of that was given to him. That was mine.

"Q. How was this made up?

"A. This was made up from inspection of our books and papers.

"Q. Well, were the items that it covers furnished to him while he was here?

"A. Certainly. I asked him if he had them.

"Q. And then you checked them with him?

"A. As I called them off, he says "Yes, I have got it," and I checked them, and you can see the ones there that he objected to.

"Q. Well, now, were there some of the items there that he objected to?

"A. Certainly.

"Q. Which were they?

"A. He objected to Pipe and Fittings as being a part of the supplies burned, and said those Pipe and Fittings were a part of the machinery. I said they were supplies. They were not in the building, they were not used, not being used. They were simply sent up there as extras in case the pipe burst, or a fitting burst, why, we would go and get one of these extras and replace it. That was one of the differences between us.

"Q. How much was that item?

"A. $104.24.

"Q. Now ,was there any other item that he objected to?

"A. Belting and Hose.

"Q. What was it he said about those?

"A. He said that did not belong, was not among the supplies; that that belonged to the machinery according to his interpretation, and should be paid for under the fire loss on buildings and machinery.

"Q. What was the fact about that, or what did you say about that?

Mr. CAMPBELL: That is calling for a conclusion.

"Q. What did you say about that, Mr. Warren?

"A. I said that I figured that as supplies. I never understood it, as a cannery man and as a layman, and not being an insurance man—he might interpret it in one way and I would interpret it another—I should call it, if I sent up there twice as much, enough to re-

fit a cannery, I should simply say it was extras, and was among my supplies, as I understand it — as I understand interpreting English.

"Q. How much is that item?

"A. That item is $124.57.

"Q. Now, was there any other item that he objected to?

"A. Yes, sir. He objected to putting into supplies the pig tin, the lead and the copper. He said that that was not melted, that it was just as good as it was before, and that he would not take any account of it and that I could use it. I told him that for my purpose, it was gone.

"Q. Was there any other item there, Mr. Warren?

"A. Yes, he objected to Hanging Lines. He said they were in the net house and were not insured.

"Q. What did you tell him about that?

"A. I told him that I thought it was, but he was interpreting the policy, and I found out that the difference between a policy to the man who insures and the policy as it reads to the adjusters is two different things. That is my first experience.

"Q. Well, did you have Mr. Daly explain to him about how it was connected with the cannery?

"A. I did.

"Q. The net house and the platforms, etc?.

"A. I did.

"Q. What did Mr. Jolly say to that?

"A. Well, he didn't think so.

"Q. Didn't think it was connected with the cannery?

"A. No sir.

"Q. Mr. Jolly had never been up there, had he?

"A. I should think he had by the way he undertook to contradict Mr. Daly.

"Q. Well, did he claim to have been up there?

"A. I didn't ask him. I was a little suspicious that he had not been up there.

"Q. Now, were there any other items that he objected to?

"A. Yes, sir, there was the trap web.

"Q. What was the item of the Trap Web?

"A. The item of the Trap Web was $138.68, which was on the net rack. He said that was not insured.

"Q. Why did he say it was not insured?

"A. He said it was not connected with the cannery.

"Q. Now, did you show him about that? What did you say to him?

"A. Oh, I would not attempt to show him. I told him that Mr. Daly could tell him about it.

"Q. Well, did you have Mr. Daly explain that to him?

"A. Certainly.

"Q. In your presence?

"A. Yes, sir.

"Q. What was the explanation?

"A. I couldn't tell that. I would rather Mr. Daly would tell that. We understood, though, I will say in a general way, we understood that it was, from Mr. Daly's explanation.

"Q. Well, what was Mr. Daly's explanation to Mr. Jolly?

"A. That it was, as I understood.

"Q. Did he say how it was connected with the cannery?

"A. Yes, sir.

"Q. By these platforms?

"A. Yes, sir.

"Q. Any other items that he objected to?

"A. Yes, sir. There was the gill nets, $1,742.41.

"Q. What was his objection to that?

"A. Well, he said the gill nets were in a net house, and were not insured according to his interpretation of the policy.

"Q. Does that stand on the same footing as these trap web you speak of?

"A. Yes, sir, exactly. I have a memorandum of it here.

"Q. Was there any other items he objected to?

"A. Yes, sir, he objected to the Floats, $198.

"Q. What was his objection to that?

"A. He said it was in the net house, and not insured.

"Q. Any other items?

"A. Yes, Lead Line, $137.47.

"Q. What was his objection to that?

"A. He said they were in the net house, and not insured.

"Q. Any other items?

"A. None that he objected to me on.

"Q. Now, these other items that are on this sheet, were they all gone over with him, or only some of them?

"A. I called them over to him, and checked them

before we went to San Francisco, to see if he had them."

* * * * *

"Q. What if anything was done about assuring Mr. Jolly as to the cause of the fire up there?

"A. We tried to investigate the cause of the fire up there, for two reasons: I did not want to be fooled myself, and neither did I want to fool Mr. Jolly. When my cannery employees came back I paid them without any question. They were fearful that they were going to have the fire charged back to them. So I thought I would loosen their tongues by paying them quickly. Then I talked the matter over with Mr. Jolly, and we tried to investigate the cause of the fire. At his suggestion—I don't know whether it was his suggestion or mine—call it my suggestion, if you will—I said, "We will get this Chinaman, and we will get him in here, and we will ask him what the cause of that fire was if he knows. We cannot get anything out of him. My superintendent says he cannot get anything out of him." And he came into my office and we sat around the table. I sat here, one of my sons sat over there, two were on that side, and Mr. Jolly was over here, and I says "Now Kwong, I want you to tell us what the cause of that fire was." And in order to assure that Chinaman that he would tell the truth about it, and that it would not hurt me at all, because he has been my foreman so long, I says "It will make no difference to me whether it was burned by smoking or not." And Mr. Jolly says, "It wont make any difference to Mr. Warren if that was burned by your smoking. We would like to know what

was the cause of that fire." That was in the presence of my two sons, and Mr. Jolly knows it.

"Q. What was the result of the examination of the Chinaman as to whether or not you could find out the cause of the fire?

"A. He said "Me no savvy." He said he didn't know.

"Q. Have you ever found any cause of this fire, Mr. Warren?

"A. Never. I don't know the cause of it. The man that intimates that I did know the cause and swore falsely, I would hate to tell him what he is.

"Q. You say you went down to San Francisco. With whom did you go?

"A. Went with Mr. Jolly. A very good traveling companion, too.

"Q. You will please state whether at that time Mr. Jolly was representing the insurance companies that had insurance on the building as well as on the stock and salmon.

"A. Yes, sir.

"Q. And what did he do while he was here about adjusting the loss upon the buildings?

"A. Well, he had it all made up, as far as I know. He was here investigating.

"Q. Did you have any understanding that he was going to prepare your proofs of loss under these policies?

"A. I don't understand.

Mr. CAMPBELL: State the conversation that took place.

"A. I cannot state any conversation. I would

not attempt to, sir.

Mr. CAMPBELL: We don't want your conclusions.

"A. I only can state facts.

"Q. Let me ask this question. When you went to San Francisco, you went down with Mr. Jolly, did you?

"A. Yes, sir.

"Q. On the same train?

"A. On the same train.

"Q. What was the purpose and object of the trip?

"A. One of the objects of my trip was, I found we could get no agreement with Mr. Jolly—that was very evident. That was a conclusion. And I had to get my proof of loss in before the sixty days, as you will observe by the terms which they plead now, or I would have been out of court and out of everything else.

Mr. CAMPBELL: We move to strike that out as a conclusion of the witness, if the Court please. It is not a conversation.

"A. He is asking my reason, and I am giving it.

"Q. What was the sixty day provision you allude to, sixty day requirement?

"A I would have to make my proof of loss in sixty days. Otherwise it was forfeited. I had some friends that got into that fix once.

"Q. In your last answer, did you allude to this condition in the policy: that you should, within sixty days after the fire, unless such time was extended in writing by this company, render a statement to the company signed and sworn to by the insured, stating

the knowledge and belief of the insured as to the time and the origin of the fire, and the interest of the insured and all others in the property, the cash value of each item thereof, and the amount of loss thereon, all incumbrances thereon, all other insurance, whether valid or not, covering any of said property, and a copy of all of the descriptions and schedules of all policies, any changes in the title, use, occupation, location, possession or exposures of the said property since the issuing of this policy, by whom and for what purpose any buildings herein described, and the several parts thereof, were occupied at the time of the fire, and shall furnish, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged, and shall also, if required, furnish a certificate of the magistrate or notary public not interested in the claim as a creditor or otherwise, nor related to the insured, living nearest the place of fire, stating that he has examined the circumstances, and believes the insured has honestly sustained loss to the amount that such magistrate or notary public should certify. Is that the sixty days that you have reference to in your previous answer?

"A. Yes, sir.

"Q. Well, now, after you got to San Francisco with Mr. Jolly, what did you do about preparing proofs of loss?

"A. Proofs of loss were prepared in the office of M. C. Harrison, San Francisco, and when I got there I examined them very carefully, and with the policies. They were made up, and I submitted this—if you will

let me have that paper—I submitted this, or it was submitted in my presence, to a man by the name of Koempel, I think it is—I cannot get his name—but I put it down on that memorandum; and he said that they were in first class shape.

Mr. CAMPBELL: Just a moment: We object to any conversation unless made with an authorized agent of the defendants.

Mr. CAREY: I have no objection to striking that out.

COURT: Very well.

"Q. After you submitted them to this Mr. Koempel as an expert, you turned them over to whom?

"A. I then was satisfied with them and signed them.

Mr. CAMPBELL: I object to that portion of counsel's statement about turning them over to some expert. I think we are experted to death now.

COURT: That is not material in this case. It is a question of what proof he made and what he didn't make.

"Q. I ask you to whom did you deliver these proofs of loss?

"A. I delivered it to agents of these several companies.

"Q. The general agents and managers?

"A. General agents."

* * * * *

Thereupon the witness, Frank M. Warren, testified that he furnished and delivered to defendant proofs of loss on the 30th day of September, 1910.

Same was offered in evidence by plaintiff, and marked "Plaintiff's Exhibit No. 27½."

"Q. I show you a document dated San Francisco, California, October, 1, 1910, and ask you whether or not you recognize that and where, if at all, you received that and under what circumstances?

"A. Well, I received that in San Francisco, I think, a communication from Mr. Jolly in reference to the loss.

"Q. Where was it given to you, Mr. Warren?

"A. I wouldn't—I don't know whether I received that by letter. My impression is that I received that by letter, not direct.

Mr. CAREY: I wish to offer that in evidence.

Marked "Plaintiff's Exhibit 32."

* * * * *

"Q. Now, is it a fact that at the time Mr. Jolly was here Mr. Harrison of San Francisco was here?

"A. Yes, sir, part of the time.

"Q. Do you know whether at that time Mr. Harrison submitted the insurance covers on this other insurance, to Mr. Jolly?

"A. He did, he was in my office.

"Q. At Portland. Then, it is not true, is it, that proofs of loss furnished the 30th day of September, some six weeks after the fire, were the first intimation that these insurance companies had that you had other insurance, or as to the character of that other insurance?

"A. From the statements that you have made deeming that a notice, they had these statements—

and if that is deemed a notice, they had notice.

"Q. Now, Mr. Warren, Mr. Jolly mentions in here, or objects in here, that certain articles are not shown to have been there in the salmon cannery building or adjoining and communicating therewith. I want to ask you what proof had been given to Mr. Jolly prior to this time about this fire.

"A. Mr. Daly had endeavored to explain to him where that net house was and how it was situated with reference to the cannery.

"Q. What is the fact as to whether Mr. Daly and Mr. Jolly went together to see the builder who had the original plans of these buildings?

"A. Well, they went—they took the original plans down to the builder to figure the adjustment of the fire loss, I know that. I don't know in connection with that.

"Q. Would you or would you not say Mr. Jolly had this information while he was in Portland?

Mr. CAMPBELL: If the Court please, the witness should be restricted to conversations which he himself had with Mr. Jolly or to conversations had with Mr. Jolly in his presence. This is another conclusion.

"A. Let me understand your question, Judge. What was your question?

"Q. I want to know what information was given by you or by Mr. Daly in your presence, through Mr. Jolly while he was at Portland, about this adjoining or connecting net house and wharf, or the like?

"A. Mr. Daly gave him the information that it was.

Mr. CAMPBELL: In your presence, Mr. Warren?

"A. How is that, sir?

Mr. CAMPBELL: In your presence?

"A. Yes, sir.

"Q. Is it a fact that Mr. Jolly had been furnished by Mr. Daly at Mr. Jolly's request, diagram made here while Mr. Jolly was in Portland?

"A. Yes, sir.

Mr. CAMPBELL: I think counsel should make his questions other than in a leading form. I don't want to object all the time.

"Q. I will show you the diagram, Defendant's Exhibit A, and ask you whether that is a document which was furnished to Mr. Jolly while he was here in Portland?

"A. Well, I wouldn't state that. There is only two things that I did. I took these two memorandums that I could swear by. I never thought it necessary to take one of those so as to thoroughly identify it.

"Q. Now, then, there is some call here for further information, respecting sundry items, including metals and belting and hose. I want to know whether or not prior to this time Mr. Jolly had that information from his own examination.

"A. Certainly he had it.

"Q. In what way did he have it?

"A. He had it when he was up here inspecting the books.

"Q. Sir?

"A. He had it while he was up here gathering the

information that he wanted because we tallied it off there that day I went away.

"Q. Now, there is reference in this document to —there is a question whether the salvage which you claim in your proofs of loss was salvage that was taken out of the building, or whether or not it was property that was in other buildings not destroyed. I want to know whether Mr. Jolly had that information when he was in Portland.

"A. I wouldn't be absolutely certain of that, sir.

"Q. In your furnishing him a list of supplies that were destroyed?

"A. We furnished him a list of supplies that were burned.

"Q. Now, was there any talk between you as to whether or not there was any salvage in the buildings destroyed?

"A. There was no salvage in the buildings at all.

"Q. Did you tell him that?

"A. Yes sir, told him no salvage in the buildings.

"Q. He knew at the time?

"A. He knew there was no salvage in the building that was burned.

* * * * *

"Q. Mr. Warren, what did you do in response to that request of Mr. Jolly to appear at his office and submit yourself to an examination?

"A. I appeared at his office—the company's—and took the books—these papers that are here—this paper that is here, and with Mr. Harrison went down to Mr. Jolly's office, and there was no reporter or no

stenographer at that time in his office, so I went into a little side office and he asked me questions. Having no stenographer, he asked me the questions and then put down my replies. After he was through he submitted that reply to me and I read it over, and I said "Mr. Jolly, I didn't make those replies in that language; your understanding of my language was different from what I—the effect of it to you was different from what I meant to say. Therefore I want the replies in my own language." And that, as I remember now, that fell through—that examination on that basis. Then I appeared again after that.

"Q. I know, but didn't you go down town and make up an answer to these interrogatories?

"A. That was the next time he asked me.

"Q. Well, just tell what occurred next.

"A. The next time in speaking of this ——

"Q. Pardon me a moment—state whether or not the meeting was then adjourned until another day?

"A. I don't think it was adjourned—that was a conference; we hadn't made our break yet, absolutely I had been telling him what there was there and I had been telling him as far as I knew, not personally, but from information I had gotten from our people here, and among other things there was a question of where this belting and where this hose was and the amount of the belting and the amount of the hose; whether it was in the main building or whether it was in the net house, and whether the net rack was adjoining, and I said, "I will not be absolutely certain as to it." I said to him, "I cannot tell that; I am not absolutely

sure. I will telegraph to Portland and find out, and do you want an affidavit from my son up there, or will a telegram suffice you?" He says, "I will take the telegram." I telegraphed and in response to that here is a copy of some of the telegrams I sent.

"Q. I will first show you this document under date of October 6, 1910, which has been furnished at the request of the plaintiff by the defendant's counsel. I will ask you whether or not you have seen that before and under what circumstances.

"A. It was answer to some questions. This, you see, is not—this is merely a letter, that is my writing —that is the telegram.

"Q. Did you furnish those documents to Mr. Jolly?

"A. I did, I handed them to him.

"Q. And this letter?

"A. That letter is all right.

"Q. What is the fact as to whether or not there was a letter like that going to each of the different companies. This one is addressed to the Globe Rutgers Fire Insurance Company.

"A. Yes, sir, each was furnished one. It was furnished each of them"

* * * * *

Mr. CAREY: Yes, certainly. I will offer the communication with the accompanying telegrams, in evidence.

Marked "Plaintiff's Exhibit 33."

"Q. This telegram addressed to you under date of October 4, 1910, signed George A. Warren, did you

receive that?

"A. I did.

"Q. From Mr. Warren, George Warren?

"A. I did. I have a copy of it here; what date is that, Judge?

"Q. October 4th. And this telegram from George A. Warren, dated October 5th addressed to you—did you receive that also?

"A. I did.

"Q. And the third one—the telegram of October 5th signed George A. Warren addressed to you; did you receive that?

"A. I did.

"Q. And those are the telegrams you gave Mr. Jolly?

"A. Those are, yes, sir.

"Q. How did you come to furnish those telegrams to Mr. Jolly?

"A. Because I was a little in doubt as to just where some of those articles were, and the amount in dollars and cents. You see, I only had—

"Q. Mr. Jolly asked you about those things, did he?

"A. Mr. Jolly asked me about those things.

"Q. So you telegraphed to the office at Portland to find out?

"A. I telegraphed to the office in Portland in order to be absolutely sure.

"Q. Mr. CAREY: Now I will read these telegrams with the permission of the Court. The first one October 4th: "Frank M. Warren, Care Palace

Hotel, San Francisco, Cal. Thirty seven hundred twelve cases on barges at time of fire. Net house was built on same wharf as net racks. Hanging line and floats were in net house. Trap web was on net rack." The next is: "Portland, Oregon, October 5, 1910, F. M. Warren, Care Palace Hotel, San Francisco California. Belting seventy four dollars thirty eight cents; hose fifty dollars nineteen cents. Wharf and net racks connected by continuous wharf to main cannery at boiler room and by elevated roadway to front door." The next one: "Portland, Oregon, October 5, 1910, Mr. F. M. Warren, Palace Hotel, San Francisco, California. Lead line was in net house. George A. Warren."

"Q. Now, how did you come to telegraph George about those things?

"A. Just as I tell you, I was a little mixed on it and he was questioning very closely. "Now," I says, "we will find this out without any doubt at all, and I will telegraph and submit the telegrams to you."

"Q. Now, in this main document, "Plaintiff's Exhibit No. 33.", which was signed by your company by you as president, you gave Mr. Jolly some information as requested in that former communication to you, which is already in evidence, and among others you told him about this insurance which you had on the property. In the communication you used this language: "The original open cover signed by the underwriters has been produced and exhibited to and examined by your Mr. Jolly; as to what it covers it speaks for itself." Is that or is it not a fact that it

had been submitted to Mr. Jolly before these questions were asked?

"A. It had been submitted.

"Q. Now, as to the matter of apportionment, you say this: "I feel that I am not competent to discuss this question, but to the mind of a layman whose intent and agreement was to insure and pay premium on 100 per cent and no more, and assured should not suffer loss because of this agreement as to how loss should be apportioned between underwriters when it is admitted by you that the policies in question all cover property on which loss is claimed—there must be insurance law clearly defined somewhere which will give assured proper remedy against each underwriter." Now, is it a fact then, that there was a disagreement, according to Mr. Jolly, as to how the insurance should be divided up among them?

"A. That is, he had a dozen ways of dividing. I couldn't tell.

"Q. How many different ways did he figure this apportionment during your negotiations with him, Mr. Warren?

"A. I can't tell you how many times he has figured it.

"Q. As to the apportionment to the different policies?

"A. He has figured it: On October 1st he said Lloyds' Company $250,000; on October 12th he said Lloyd covered $177,135; on October 14th he said Lloyd's covered $164,106; on November 8th he said the Lloyd's covered $178,681; on December 6th he

said Lloyd's covered $220,500.

Mr. CAMPBELL: Shows how easy it is to apportion."

* * * * *

"Q. Now, Mr. Warren, who was Mr. J. P. Treanor that you named as an appraiser?

"A. He was a man that does appraising in San Francisco. By inquiry I found that he was a square man and—

"Q. Had you any personal acquanitance with him?

"A. No, I don't know him.

"Q. Was he interested in any way in your cannery?

"A. Not at all.

"Q. Had he any interest in the subject matter of the controversy that had arisen between you and Mr. Jolly?

"A. Not at all.

"Q. I show you a letter dated October 6 1910, and signed E. J. Jolly, Adjuster." I would like to know whether you received that letter.

"A. Yes sir.

Mr. CAREY: I want to offer that in evidence.

Marked "Plaintiff's Exhibit 34."

"Q. Please look at the affidavit I hand you headed "Statement of Frank M. Warren," and sworn to October 7, 1910. I will ask you whether that is the affidavit that you made?

"A. Yes sir, that is the affidavit I made.

"Q. What did you do with it?

"A. What did I do with it?

"Q. Yes.

"A. Handed it to Mr. Jolly.

Mr. CAREY: I wish to offer that in evidence.

Mr. CAMPBELL: No objection.

Marked "Plaintiff's Exhibit 35."

Mr. CAMPBELL: I understand this is being offered as part of the proof of loss.

COURT: Part of the proof of loss."

* * *

"Q. Now, in reply to this inquiry state whether or not you furnished further answers to these questions which you answered here.

"A. I did. When I answered that I was considerably irritated. I went down to Mr. Jolly's office—I had answered all his questions—

Mr. CAMPBELL: If the Court please, we think it is immaterial how this man felt about it or his examination—the policy calls for it.

"A. I want to explain my reason for saying I do not know personally. I ask the Judge if I have a right to explain.

COURT: You may explain that.

"A. The reason I was, I had explained all that, talked it all over with Mr. Jolly, told him three or four times just what I had. I had talked to him about the building and hose until I had gotten tired and sick of it, and I says "Now, Mr. Jolly"—then he came at me—"I tell you what George said, what my information is from my men." Then he began to get captious just as we have been going on today, and he says "Will you state that

personally—do you know it to be so?" Well, I thought the best way for me to do was to state what I did know, to go home and get all the infornation from the men that did know, and furnish it to the companies; it had been furnished in a general way and my statements had been taken without question up to that day, but at that day it looked to me as though there was some effort to trap me in some of the statements that I might make because I didn't know personally. After it come to "do you know personally?" I said how much hose there was there and how much belting there was there and I showed him these telegrams; he would say "do you know personally?" I thougt it was time that I quit.

"Q. Then you got from other sources the information?

"A. I did.

* * *

"Q. Will you look at this amended or supplemental proof of loss, and state whether or not that was furnished by you to the Svea Insurance Company;

"A. Yes sir.

"Q. What is the fact as to whether or not you furnished a similar or identical document to the other three defendants?

"A. Idid.

"Q. What date did you furnish it?

"A. October 8th.

"Q. There was a letter addressed to them accompanying this amendment, was there not?

Mr. CAMPBELL: I havent't all my papers here. A great bulk of the correspondence is over at the hotel.

That is why I haven't it.

Mr. CAREY: Just as well; we can get it tomorrow. Now, with the permission of the Court, I will read this.

Marked "Plaintiff's Exhibit 36."

* * *

"Q. Mr. Warren, before you sent any of these additional affidivits and statements, I would like to ask you whether you received the communication which I now hand you dated October 14, 1910?

"A I did.

Mr. CAMPBELL: What is that date, Judge Carey?

Mr. CAREY: October 14, 1910, being a communication addressed to Mr. Frank M. Warren, president of the Alaska Portland Packers' Association, and signed by the various insurance companies by their general agents and managers. I offer this in evidence.

Marked "Plaintiff's Exhibit 37."

* * *

Mr. CAREY: I wish to offer in evidence a letter addressed by Frank M. Warren to the Globe & Rutgers Fire Insuarnce Company, under date of October 8, 1910, and attached thereto a statement of Frank M. Warren, addressed to the Globe & Rutgers Fire Insurance Company, under policy 550,017, the latter document being identical with Exhibit 36, addressed to the Svea Company.

Mr. CAMPBELL: We have no objection to this, to prove the fact that this letter was served as supplemental proof of loss upon us, but do object to it, and ask an exception as against proof of loss produced being sufficient proof of the contents of the documents.

For instance, in this supplemental proof of loss, they are claiming freight now for $7500, and that of course we cannot admit the sufficiency of now.

Marked "Plaintiff's Exhibit No. 38."

Mr. CAREY: The document itself making supplemental claim for $7500.09, has already been produced and read. This is a facsimile given to one of the other Insurance Companies, and as I understand, under stipulation now entered into, the documents are agreed to have been served on each of the several different companies, and are identical in form.

Mr. CAMPBELL: Whatever was served upon one company we will admit was served upon the four of us.

Mr. CAREY: The letter which was offered yesterday was not produced, so I simply want to read it now, so that it may be before the Court, in connection with the document itself."

* * *

"Q. Mr. Warren, will you state whether or not you give each of these different companies a copy of this supplemental proof of loss?

"A. I did. I prepaired it, and went around accompanied by a witness and delivered it.

"Q. Where did you deliver it?

"A. Delivered at the offices of the various companies. Edward Brown and Sons, the St. Paul people and Drennan."

* * *

"Q. I show you a letter signed Alaska Portland Packers' Association, per Frank M. Warren, President, addressed to the National Union Fire Insurance Company,

and ask you if that is your signature on that letter?

"A. Yes, sir, that is mine.

"Q. What is the fact now as to whether you mailed that letter or gave it to the National Union Fire Insurance Company?

"A. I mailed it to the National Union Fire Insurance Company, and wrote it very advisedly, and am willing to swear to its contents.

"Q. What can you say as to whether or not you gave a similar or identical letter to the other defendants?

"A. I mailed copies of that to each of the Insurance Companies.

Mr. CAREY: I will offer the letter in evidence, and will read it, if the Court please.

Letter marked "Plaintiff's Exhibit 39."

* * *

"Q. Mr. Warren, I show you now a communication dated October 28th, 1910, with accompanying affidavits, and a map and will ask you to look that over and state whether or not you furnished that to different insurance companies—defendants?

"A. I did mail it and register it. That was a copy.

Letter marked "Plaintiff's Exhibit 40."

* * *

"Q. Mr Warren, I wish you would look at that document and state what it is.

"A. That is a letter from the Insurance Companies addressed to us.

"Q. A letter from the defendant companies, adressed to the Alaska Portland Packers' Association?

"A. Yes sir.

"Q. Did you receive that letter?

"A. We did.

"Q. And the documents thereto attached?

"A. I did.

"Q. Where did you receive it?

"A. In my office.

"Q. In Portland, Oregon?

"A. In Portland, Oregon.

"Q. During the course of your dealings with Mr. Jolly and the companies?

"A. Yes, I notice there is one company left off of there. They had already settled.

"Q. Then this is from the four companies involved in this case?

"A. Yes.

Mr. CAMPBELL: Following this examination, the St. Paul paid up?

Mr. ALLEN: Yes.

Mr. CAMPBELL: This last examination?

"A. How is that, sir?

Mr. CAMPBELL: I say following this last examination the St. Paul paid up?

"A. Yes sir.

"Q. Do you know when you received this, or about when? It is dated San Francisco, November 8, 1910.

"A. I presume I received it in due course of mail.

"Q. But you received it through the mail?

"A. I did.

"Q. United States Postoffice?

"A. Yes, I think it was a registered letter.

Mr. CAREY: We would like to offer this in evidence

if there is no objection.

Marked "Plaintiff's Exhibit 41."

Mr. CAMPBELL: We have none."

* * *

"Q. Now, I will hand you, Mr. Warren, a document and ask what that is.

"A. This is a letter acknowledging that the letter of November 8th was received from the Globe & Rutgers and that the proposal is respectfully declined.

"Q. Is that your signature attached to it?

"A. That is my signature.

"Q. Was that written on behalf of the plaintiff?

"A. Yes, sir.

"Q. Did you or did you not mail that letter to each of the four companies?

"A. I mailed it to every company seperate.

"Q. And this letter is all the same, Mr. Warren—they are all the same?

Mr. CAMPBELL: Yes, I have no objection.

Mr. ALLEN: It is stipulated that whatever is written to one company is written to all and these letters appear to have been received, per endorsement at last, received November 14, 1910. I would like to offer this in evidence.

Mr. CAMPBELL: No objection.

Marked "Plaintiff's Exhibit 42."

* * *

"Q. Mr. Warren, I wish you would look at this document and state what it is—with the envelope attached.

"A. This is a communication to me from—well, it was from the four insurance companies in interest by

Mr. Jolly, adjuster, making another,—advising me that —

Mr. CAMPBELL: The document speaks for itself.

"Q. Did you receive this through the United States mail?

"A. I did.

"Q Is that envelope to which I call your attention bearing the address Alaska-Portland Packers' Association, the envelope in which it came?

"A. Yes, sir.

Mr. CAMPBELL: We admit the sending of that letter by Mr. Jolly.

COURT: What is the date of that?

Mr. ALLEN: This is dated December 6, 1910, at San Francisco, California, is addressed to the plaintiff corporation and bears receipt stamp December 8, 1910.

"Q. Now, Mr. Warren, I note on the envelope attached to this communication a pencil memorandum. Is that your writing on there?

"A. Yes, sir, that is my writing.

Mr. ALLEN: I don't believe I offered this letter in evidence. I would like to do so at the present. I believe it is understood it is received without objection.

Marked "Plaintiff's Exhibit 43."

* * *

"Q. Now, I wish you would look at this document designated on its head as "Agreement for submission to appraisers," and state whether or not you received that and, if so, how and when?

"A. I received this in due course of mail from the

four companies that are contesting.

"Q. In this case?

"A. In this case, asking for appraisement; asking for an appraisement of some property that had already been paid for and how much the companies were interested.

"Q. When did you receive this?

"A. The date?

"Q. Yes, is the date marked on there?

"A. In due course of mail.

Mr. CAMPBELL: The apparent date is the 3rd of January.

"A. Due course of mail.

"Q. That came some time in the very early part of January, the first week in January?

"A. I should judge so.

"Q. 1911. We offer it in evidence.

Mr. CAMPBELL. No objection at all.

Marked "Plaintiff's Exhibit 44."

* * *

Mr. ALLEN: Will you acknowledge receipt of this letter so it will not be necessary to put Judge Carey on the stand?

Mr. CAMPBELL: Yes sir.

Mr. ALLEN: May we offer it in evidence?

Mr. CAMPBELL: Yes, sir.

Marked "Plaintiff's Exhibit 45."

* * *

E. J. JOLLY, a witness on behalf of defendant, testified as follows:

* * *

"Q. How long had you been in the fire insurance business, if you had been in it, prior to that time?

"A. In any capacity? About thirty years.

"Q. Are you connected with any fire insurance company? Employed by any fire insurance company continuously?

"A. Under salary?

"Q. Yes.

"A. No, sir, I am not.

"Q. What position do you occupy in the adjusting field?

"A. When my services are needed by one or more companies, they notify me and I am paid a per diem and expenses.

"Q. Were you employed under that arrangement, per diem and expenses, by the four companies, defendants in this case, to investigate and adjust this loss?

"A. I was."

* * *

"Q. When did you come to Portland—yes.

"A. The 3rd day of September, if I remember correctly.

"Q. Had the "BERLIN" arrived back from Alaska at that time?

"A. I was told not. I don't know when she arrived.

"Q. Now when did you first see Mr. Harrison, or any of the officers of the plaintiff corporation, when you got to Portland?

"Q. I think it was about fiftten minutes after I arrived in Portland.

"Q. Did you go with them to their office?

"A. I did, yes, sir. Will you allow me to explain? As I remember the circumstance, I came to Portland with Mrs. Jolly, went to the hotel and registered; went to the room. Had hardly arrived in the room when the telephone rang; the clerk said a gentleman was there to see me. I asked him to enquire who it was; he said it was Mr. Harrison. I went downstairs, found Mr. Harrison there with a gentleman he introduced as Mr. George Warren. They invited me to accompany them in an automobile to Mr. Warren's office, which I did, where I met Mr. Warren and his other son, and as I remember now, the four or five of us were in the room—

"Q. Now, Mr. Jolly, before you go into that. Were you adjusting at that time any other losses—the loss on any other part of the property of the plaintiff corporation, arising from this fire?

"A. I was sent here by the companies interested in three separate and distinct portions of that fire; one set applied on the building; one on the furniture and fixtures, machinery, etc., and one on the supplies.

"Q. Did you adjust the loss on the building and machinery?

"A. I made up the figures and submitted them to the managers.

"Q. Do you know whether or not those losses were afterwards paid?

"A. I don't know anything about that."

* * *

"Q. Now, Mr. Jolly, will you start in from the time that you went to Mr. Warren's office, and state to us the facts of what transpired between you and the rep-

resentatives of the plaintiff corporation?

"A. Just tell you—just detail it all?

"Q. I want you to go ahead—state what took place between you—yes.

"A. My recollection is, when I went into Mr. Warren's office, I was ushered into an inner office; Mr. Warren, one or both of his sons and Mr. Harrison were there with us. Some one asked if I was going to take up the matter in connection with the loss; I said that I was here for that purpose. They asked me how soon I would be ready to take them up. I said I was ready to start for Nushagak the next morning if I could go. My recollection is that some one of the gentlemen told me that the "Dora" was the only means of getting there and that the "Dora" had already made her last trip for the season. I asked if there was any other way of reaching Nushagak, as I had never been in Alaska. I was advised that there was no other way. I then asked, as I remember, to see the policies. The policies covering the building and machinery were produced; I made notation of the numbers of the policies, the names of the companies, and the amounts covered, on a letterhead, as I remember, of the Packing Company. My recollection is that I examined the form covering the building; I noticed that the form read "on building". I questioned as to what was destroyed; I was informed that the cannery building, net house, some of the platforms, part of the wharf, part or all of the net rack, were destroyed; and the policy form read "on building". I asked if the buildings were all connected. My recollection is that a photograph was produced which I thought clearly de-

fined that the net house was not a part of or was not adjoining and communicating with the cannery building proper. I so stated. As I remember, then I asked the condition of the machinery and was told that the machinery was a total loss. I commented on that as there was usually very heavy machinery in a cannery building that is generally not all in the cannery building, and I couldn't understand how it could be a total loss on machinery. Then as I remember, I asked the condition of the salmon, the condition of the supplies, and I was informed that they were a total loss, and I think, right at that time Mr. Harrison produced a statement—items showing what was destroyed The value of it, and the claim made for destroved portions of the contents at that time. I don't know what it was on but the contents --it was a contents statement.

"Q. Just let me interrupt you a moment. Had the "Berlin" arrived back at that time?

"A. I don't know. I was told not. I inquired if she was here and was told not. I don't know if she had arrived or not.

"Q. Go ahead.

"A. In looking over the statement, I discovered quite a lot of zinc, lead, copper, solder, several tons of it, and asked the gentlemen if they claimed that was a total loss, as I couldn't imagine how it could be possible for materials of that character to be a total loss under any condition. The reply was that it was of no value to them. I said that didn't matter; in an insurance contract if there was any value to anybody, it must be saved.

Mr. ALLEN: We object to how he construes any insurance.

COURT: This is a conversation that occured between him and these people.

"A. I questioned them so severely that I said I would not accept any such proposition as that material being destroyed or of the quantity of salmon they claimed being destroyed. It was a physical impossibility. It was not the first cannery loss, or the first loss on cans that I had adjusted, and I thought I knew something about what would burn and what wouldn't burn. I disputed those items being a total loss.

Mr. CAREY: I would suggest that the witness would testify about the conversation only.

COURT: Just tell the conversation.

Mr. CAMPBELL: Repeat the conversation. We will bring out your knowledge later.

"A. I disputed those things being a total loss. My recollection is that Mr. Harrison did most of the talking. My recollection is that Mr. Harrison picked up a piece of paper and made a notation of what parts of that statement I disagreed in, as to a total loss, and disagreed in as to being a proper entry under the items of supplies. I had three different sets of policies under which to adjust, the building, the machinery, and the supplies. I have always understood that an adjuster was sent, or is sent to a fire to—

Mr. CAREY: I don't think he should be permitted to state his opinion.

COURT: Just state the conversation with these people. Just confine it to that will you please?

Mr. CAMPBELL: I may say that Mr. Jolly is a little bit deaf.

"A. I may say that I disputed that items in that statement were properly made out. My recollection is that Mr. Harrison made those notations, and I was requested, I think, by Mr. Harrison, to prepare a statement setting forth just exactly my ideas of what was covered and where they were covered. My recollection is that I asked Mr. Harrison for the paper, he had in his hand, and he said that was the only statement they had, and I made a copy of that statement. I believe that is all that occurred that day. No, I then asked to see the policies covering the supplies and was told that Mr. Harrison had those policies. I said I would like very much to see them, and was told that they would be produced, as I remember, the next morning, or would be produced for me to examine. My recollection is that is all that occurred that day. The next morning I went back and asked for data that would enable me to adjust the loss on the building. My recollection is that Mr. Warren—Mr. F. M. Warren, Jr., told me that all that evidence could be gathered from the book. I asked him how long that building had been built. My recollection is that he said ten years. I said then it would be a physical impossibility for me to determine from the books what the material in that building consisted of, as it, no doubt, would show all the repairs that had been made during this period of ten years and what I wanted was the size of the materials that went into that building—to build that building on paper, and to make it a part of the matter to be submitted to the managers. My recollection is that they

told me they had nothing in their possession that would show the construction of that building—the materials in that building. I think at that time I asked if any one was sufficiently familiar with the buildin g to make me a plan of it, and I was advised that Mr. Daly was very familiar with the plan—that he had worked for them some ten years, and could give me any information of that character. I asked that such a diagram be made and they said it would be. My recollection is now that Mr. Harrison or his assistant brought over the fire insurance companies' policies representing the $27,500 of fire insurance on the materials and supplies.

"Q. Those are the policies in suit here, Mr. Jolly? Those are the policies on which this action is brought?

"A. I suppose so. I have'nt examined them since I came in, but I presume they are. I asked for the policies that covered the salmon, and was told that Mr. Harrison still had them. I said that I would like very much to see them. I wanted to compare them with the other policies, to see whether they were concurrent, and subject to the same adjustment. Some excuse was offered, and this—no data pertaining to that insurance was brought to me at all. I took the policies—the fire policies which were brought me, examined them, and, as I remember, had a copy of the form made by Mr. Warren's stenographer. In the examination of that form, I discovered certain warranties, which, in my opinion, necessitated me setting forth specifically where each part of the statement which had been handed me should apply,—part of it to the building, part of it to the machin-

cry and part of it to the supplies. My recollection is that I made such segregation. That I went to the hotel where I was stopping, and made such segregation. That I submitted that segregation to the Warrens. My recollection is that I handed—that they asked for a copy of it; that I handed it to their stenographer and asked her to kindly make me four or five copies of it, which she did. The segregation set forth that the—may I use the copy of that?

"Q. Go ahead. Is it a document which they have seen, or which was shown to them?

"A. Beg pardon?

"Q. Is it a document which the Warrens have seen, or which was shown to them?

"A. They made it themselves. I simply copied it and handed it back to them, making the segregation—I didn't make it.

"Q. You can use it then.

"A. Here is the original I made, if you want it. It reads as follows: "Inventory made after the fire." Do you want me to read the whole of it?

"Q. Yes.

Mr. CAREY: I think it may be offered in evidence first before it is read, if that is the purpose of it.

Mr. CAMPBELL: We will try to conduct our case properly, Judge Carey.

"Q. Will you slip it out of here?

"A. Yes sir (taking from file).

"Q. I will ask you whether or not the pencil notations on here are yours or are they—were they made on here originally?

"A. What?

"Q. The pencil notations—are they something that you have put on there or on originally?

"A. That is not the original. Part of them are my figures, and part of them were made, I think, by Mr. George Warren—one of the Warrens.

"Q. As the document was made to which you refer, did it contain more than the typewritten statement? The document as it came from the hands of the stenographer, and was handed to you simply contained the typewritten figures in writing?

"A. Yes, sir, the copies of this document that I have here. This is the original document that I handed her.

Mr. ALLEN: Isn't that all in evidence?

Mr. CAMPBELL: I don't know Im sure.

COURT: I understand that last paper he handed you was the original document handed to him by Mr. Warren?

"A. A copy of this document I handed to Mr. Warren.

"Q. What is this?

'A. My original that I made out at the time.

COURT: The one you made out?

"A. That is the original I made out, the first time I ever saw Mr. Warren.

"Q. But this is a document made out by Mr. Warren's stenographer?

"A. Yes.

"Q. And as it came from the hands of the stenographer, it didn't contain any of them pencil notations upon it?

"A. No.

Mr.CAREY: I would like to ask Mr. Jolly a question about that: Were those figures put on it by you?

"A. Part of them were,and part put on by one of the Warrens—I don't know which, George or Frank, or Mr. Daly. Put on by some one in their office. I found they had made a mistake, and called their attention to it. Some one of them corrected it.

Mr. CAMPBELL: We offer it in evidence—not the pencil notation, but the document.

Marked "Defendant's Exhibit G."

"A. Not all of that typewritten part was on. The bottom part was not on at that time. This certificate at the bottom was not on at that time,—subsequent date. This document down to here—the document down to there is the document.

"Q. In other words, that portion of the document reading: "I hereby certify that all of the supplies enumerated above were in the building destroyed at the time of the fire, and were destroyed in so far as could be ascertained from the appearance of the debris, which was not examined after the fire with the view of ascertaining the value of the debris if any. Portland, Oregon, September 28, 1910. George A. Warren."

"A. It was not.

"Q. When was that put on?

"A. It was put on the date there—the 28th day of September, put on that date, and the other document is dated the 13th of September, isn't it—down here—isn't there a date down here?"

* * *

"Q .Now, at the time this typewritten statement, "Defendant's Exhibit G" was prepared and handed to you, had you seen a copy of the Lloyd's policy or the St. Paul Fire & Marine excess policy?

"A. The policy?

"Q. Yes.

"A. The policy?

"Q. Yes.

"A. I never saw the Fire & Marine policy never have seen it.

"Q. Had you seen the covering notes—Lloyd's covering note and the St. Paul's covering note at that time?

"A. I had not. That is what I was asking for.

"Q. Now, go ahead and state what transpired between you, as rapidly as you can.

"A. My recollection is that I proceeded with the adjustment of the loss on the building."

* * *

"My recollection is that Mr. Warren was satisfied with the statement that I prepared on the building and my recollection is that one of Mr. Warren's sons went to the ledger, and looked up the account as to what that building stood them, and that they were satisfied with the figures I had produced with which to prepare the proofs of loss. My recollection is then that I wanted to see these policies that I had not seen covering the stock. My recollection is that Mr. Harrison was sent for; whether he came at that time or not, I can't say positively, but anyway, Mr. Harrison came that day or about that day, and I asked to see the policies covering the salmon. Mr. Harrison didn't have them—didn't bring them with him.

I said that it wasn't possible for me to continue consideration of that adjustment until I could see all of the insurance—had the privilege of examining the kinds of policies,the class of insurance it was, and ascertain whether they were concurrent with the policies I was adjusting under, or whether they had other clauses that the policies I was adjusting under did not contain, and I demanded to see those policies. My recollection is that Mr. Harrison informed me that I was not adjusting for these companies, and I asked him to kindly explain. He said he was the general agent of the St. Paul Fire & Marine, and he was going to adjust that loss. "Am I not adjutsing for the St. Paul Fire& Marine under their fire policy?" "Yes." "You tell me I am not adjusting for them under the other policies which I had not seen." "No." He was going to adjust that himself. Well, I said "Then I would like to see the Lloyd policy." Well, I couldn't see that either. Why? He was going to adjust the loss on the salmon. I could adjust the loss on the supplies, and he would adjust the loss on the salmon. I said "Do those policies--the wording of those contracts cover on the supplies and on the salmon?" "Yes." But I could pay a total loss on the supplies and then apply the balance of my insurance on the salmon, and then he had insurance enough to protest the rest of the loss. I said that was a new way of adjusting losses to me. I wasn't used to that method. I said I was told by Mr. Drennan before I left San Francisco that his company was the warranty on this salmon—is that a fact. No, it wasn't. I say "Will you let me see the policy, to see if that is or is not a fact?" I think he evaded the ques-

tion. To make a long story short, I did not see the policy.

JUROR: May I ask what you meant by warranty policy?

"A. Warranty on a—as I understood, warranty on the Lloyd policy. The Lloyds only accepted—

JUROR: That is all right. That has been explained.

"A. I think that has been explained.

JUROR: You referred to the Lloyd policy?

"A. Yes, I referred to the Lloyd policy. I understood if I adjusted for Mr. Drennan's company, and it was the warranty company, that the adjustment applied to the Llody insurance, and when told I wasn't I was very much surprised, but I didn't see the Lloyd policy, —didn't see the St. Paul Fire and Marine policy. My recollection is now that I proceeded then with the adjustment of the loss on the machinery. My recollection is that a statement was handed me setting forth the machines and shafting, gearing, belting, etc. That I took that statement with me to the hotel, and wrote out in longhand such portions of the statement as did apply to machinery or machines, or in any way was a part of the machines and machinery of a cannery property. In looking over—reading over that statement, I found there were some things I knew were left out. I went back to Mr. Warren's office and told him that an adjuster didn't want just what there was necessary to cover a total loss; he wanted what there was in the building; that I knew there were things he did have in that building that were not

down in that statement and I wanted to complete it; asked if he didn't have tools, and asked if he didn't have certain other things; he said he did; I said they are not in this statement. The statement that I wrote in longhand was handed to Mr. Daly, and Mr. Daly was asked to put those items on the statement, which he did, as I remember it. It wasn't my handwriting. It was his or somebody else in Mr. Warren's employ. I took that statement and the statement on the building, if I am not very much mistaken, and had the young lady in Mr. Warren's office make copies. Then arose the question of fire."

* * *

(Mr. CAMPBELL):

"Q. Now you were speaking about asking Mr. Harrison for the policies, and that they were not produced. Go ahead from that time on and tell you story.

"A. I then took up the question of freight. I asked them to provide me with the cost of delivering their machinery and lumber at their plant. They explained to me that they could not deliver it at the plant, it had to be lightered to the vessel; could only run within a certain distance of the plant, because of very high tides—ran some 20 feet high. Consequently all the material had to be lightered, and it took a great many men to lighter the material. I said what I wanted was some evidence of cost. Did they have a freight account? No, they owned their own vessel. I said, "Well, you must keep some account, some expense as to what it costs you by freight." No, they didn't, and anyway their vessel wasn't big enough to take all this lumber and machinery

and supplies. Well, how would they get it there; if they did not have any insurance, how would they get it? They would have to charter another vesesl. I said what would it cost to charter another vessel; there was only one vessel at port, the St. Helens, the only available vessel, and I asked them to ascertain what it cost to charter that vessel to take the supplies up there. My recollection is that one of the Warren sons went out, hunted up somebody who gave the information, and came back and told me it would cost about $40,000, which I thought was a pretty stiff freight rate. I asked them to enquire the items what this expense was made up of. They did so. They gave me all of the different items that went into the freight—went into the cost of chartering that vessel. I made some inquiry myself and learned that the Dora was not of sufficient carrying capacity to take up this material. She would have to make several trips to get it there, and I then suggested when I found there was no other means that we could ascertain here in Portland, of getting the lumber, materials, and supplies up there, I sat down to figure the proportion of what that expense would cost, of equipment of the vessel and its various sailing expenses would be to deliver the lumber there and the machinery there and the supplies there. I remember of saying to Mr. Warren it was hardly fair to charge all of the freight for building and the machinery loss which we were to have adjusted, as part of that freight should be paid by the companies that would have to take up the supplies. My recollection is that Mr. Warren told me of a case that there had been that year or the year before where he had taken up a cer-

tain number of tin cans, I have forgotten the amount but I think it was something like 100,000 tin cans, and had not charged them anything. The supplies would be nominal, it would not cost very much; I said I suppose they could go up in the same vessel, the St. Helens, the lumber and the machinery. Yes, he said, they could. Well, what would it cost? What proportion could I apply to the freight for shipping up the supplies? He said they ran a store up there and they always added 10 per cent. to the invoice cost of the material and supplies they took up to that store as the cost of handling those materials and transporting them from Portland to Nushagak. I asked him if that 10 per cent. was included in that statement they made up. They said it was. Then I said if the allowance that you figure here is applied as freight to the lumber and to the machinery you will agree that that vessel, the St. Helens, or whatever vessel takes up those supplies next spring—that takes up the lumber and machinery next spring, will take those supplies. He said he would. My recollection is that that completed the data necessary to submit to the managers showing the lumber necessary to reconstruct the building, and this freight—it seems to me there was a two-thirds and a one-third division, two-thirds either went to the lumber or the machinery—it was two-thirds and one-third. I don't remember whether the two-thirds went to the machinery or the lumber, but that is my recollection that is my division of that $47,000 charter of that vessel to take up the machinery and lumber, which I always thought was a pretty steep freight.

Then I reached the point where I was ready to take up with them the question of supplies. The cost of supplies—

JUROR: Didn't you say a few moments ago it was $40,000?

"A. $47,000 is my recollection. I won't swear positively that is the figure, but that is my recollection, the figure charged was $47,000. It is a year and a half ago. I have been adjusting loss every day since. My recollection is it was $47,000, that allowance was for freight. The question then came up about the Lloyd and the St. Paul Fire & Marine Insurance. I told Mr. Warren that I would have to have those policies. It was absolutely necessary for me to find out whether those policies covered the same as the policies I had to adjust and I must see them; I could not go any further until I did. My recollection is that Mr. Warren sent to Mr. Harrison's office and that the reply came back that Mr. Harrison was out in the country with the general agent, or somebody else, of the St. Paul Fire & Marine, inspecting business or doing something. He was not in. I said very good, I will wait until those policies were paid. My recollection is that I went back to the office either that afternoon or the next day and they had located Mr. Harrison and they had agreed with him to take me to meet him at his office at eight o'clock in the evening, if I remember correctly. I went there at eight o'clock. Mr. Harrison was not there. I waited until fifteen or twenty minutes after eight and Mr. Harrison, and if my memory serves me rightly, Mr. Sargent—I was walking there up and down the hall—I think it was Mr. Sargent. I was introduced

to him the first time—went with me into Mr. Harrison's office. I asked him to let me see the data and my recollection is that he said that it was too late to take up the matter that night, but that he would take it up with me the firt thing the next morning. The next morning I went to his office and was told by Mr. Sargent, or whoever the gentleman was—I think it was Mr. Sargent—that Mr. Harrison had taken all those papers and gone to San Francisco. I went back to Mr. Warren's office and I told Mr. Warren that there was one of two things that he could do. That I wasn't adjusting that loss with Mr. Harrison. If I was I would make him produce those documents, and I demanded of him that he produce those papers, or that he give Mr. Harrison a power of attorney to adjust that loss for him so I could compel him to show me those policies. I remember Mr. Warren and his son George were in the office at that time. I remember asking Mr. Warren if he knew how much insurance he had. He said he didn't. I said "Have you any written agreement with Mr. Harrison as to how much insurance you have got up there?" No, he didn't. I asked him if he didn't think it was a singular transaction for a business man to give a broker any amount of insurance and not know how much insurance he had on his property. He told me that Mr. Harrison had always looked after their insurance; I think he said for ten years—that he had implicit confidence in Mr. Harrison, and that he didn't know anything about his insurance business. I said ""Do you know how much you have got?" Well, he thought he had $250,000. I said "What is it on?" "I don't know." "Have you any idea?" Well, he

thought it was on the salmon. I said, "You know you have $27,500 here on these policies I have here in my possession." Yes. "Now, have you got $250,000 and the $27,500 or have you got $250,000 with the $27,000 --$27,500." He said he didn't know I said, "Is there anybody does know?" Yes, Mr. Harrison. Mr. Harrison has gone to San Francisco; taken the papers with him. How am I going to find out. "Now", I said, "Mr. Warren, you will have to do one of two things. You will have to determine if you have $250,000 total insurance or you have $277,500 total insurance, which is it?" My recollection is that he consulted with George and they concluded they had $277,500 insurance. Then, if my recollection serves me rightly, that afternoon or the morning following I went back. We took up the proposition again and they concluded they had only $250,000 total insurance. I said what does it cover. He didn't know. I said "I can't go any further with this adjustment. I can't adjust on policies that I have never seen and don't know anything about. I must have some information as to what this insurance—whether it is concurrent with this or whether it is not, and whether it covers salmon or supplies. Haven't you some memoranda, some written memoranda given by Mr. Harrison? I remember he turned to his son George, and he said "George, have we any memoranda that will show what our cover is this year with Mr. Harrison?" George said "No, for the first two years we did business with Harrison we had a written agreement as to what was placed with him, but there was nothing of that kind given us this year."

My recollection is that this was either the 12th or the 13th day of September. I had been here ten days, I think, and a notice came for me to go to Alaska and adjust a loss up there. Negotiations stopped and I think I left here the evening of the 13th to go to Alaska. I instructed Mr. Warren to kindly communicate with Mr. Harrison and get those policies back here by the time I returned. I did'nt know how long I would be gone—when I returned I would take the matter up with him further. If my memory serves me right, I returned here about the 17th day of September. Called on Mr. Warren. Asked if he had the data I wanted. He said he hadn't I asked if he had decided in his own mind how much insurance he had and what it was on. He said he didn't know anything about his insurance. I would have to see Mr. Harrison. I said, "Mr. Warren, there is one of two things you can do. You will have to issue a power of attorney to Mr. Harrison which will enable him to adjust this loss with me, or you will have to go to San Francisco and make Mr. Harrison give you that information, because I can't go any further." My recollection is that Mr. Warren said he would not give a power of attorney to anybody. Then somebody will have to go to San Francisco. I remember George remarking, "You go, father, it will be a nice trip for you. Two or three days. You go down with Mr. Jolly, and get the papers at once." I think we left here on the night of the 18th of September—

JUROR: You don't you mean you went to Alaska and returned from the 13th to the 17th, do you?

"A. From the 13th to the 17th—no, you are right.

It was about the 27th.

"Q. Where did you go in Alaska, Mr. Jolly?

"A. Petersburg.

LUROR: Where?

"A. Petersburg—27th, that is right. It must be the 27th—about the 27th. I thing the next night which would be the 28th—I won't attempt to swear to these dates. I am giving them as near as I can remember. My recollection is it was about the 28th of September, Mr. Warren and I boarded the train and went to San Francisco together. When Mr. Warren left me—I got off at Oakland, and Mr. Warren went on to San Francisco—I said to Mr. Warren, "Now you get those paper, bring them over to my office; we will finish up these papers and I will deliver them to the manager, so you can find out what they are ready to do with these different items you and I cannot agree upon. I will submit them to them, and they will tell me what to do —whether put in supplies, or buildings or machinery, or where they will be assigned. When I reach that point I will put proofs of loss on the building and on the machinery and on the supplies." My recollection is that I went home first and then went to the office; that I waited in the office all day for Mr. Warren and he did not come to the office. About four o'clock, as near as I can remember, the phone rang and Mr. Warren said to me that when he arrived in San Francisco he found that Mr. Harrison had prepared the proofs of loss and that if I had no objections they would deliver those proofs to the managers that night. And I could see them in the morning. I said well, I would like very much to

have seen those policies and know on what apportionment he had made in his proofs of these various—what disposition he had made in his proofs of these various items that I thought were not covered under his supplies. He said oh, well, I could see all of that in the proofs in the morning. My recollection now is that Mr. Brown rang me up in the morning and said that Mr. Harrison and Mr. Warren had called with the proofs the night before, would I come over and get them. Mr. Brown either sent them to my office or I went and got them. Anyway, that was the first I had ever seen of the proofs of loss. I was quite interested in finding what the other insurance was, so I turned to the back of the—or in the inside where we usually look for other insurance, and I found that the proofs of loss submitted by Mr. Harrison showed that there was Lloyd insurance for a certain given amount which I have forgotten, and that there was St. Paul Fire & Marine marine insurance, but I had always understood that marine insurance could not be mixed up with fire insurance, so I was somewhat interested in the apportionment and I chatted with Mr. Brown—it was either Mr. Brown or Mr. Drennan.

Mr. CAMPBELL: Don't relate any conversation with Mr. Brown.

"A. It was one of the managers, whether it was Mr. Brown or Mr. Drennan.

"Q. Don't state any conversation with Mr. Drennan either.

"A. Oh, very good. I found that the back of the so-called proofs of loss contained the wording of what I considered was a cover—

Mr. CAREY: If the Court please, this witness is all the time giving what he considers and what his opinion is and I think we don't want to interrupt his examination unnecessarily, but it seems to me he gets in a great deal of matter—have the witness testify—

COURT: He can state what he found in the proof of loss that has been introduced in evidence.

"A. I found the wording of what purported to be the Lloyd's cover and the St. Paul Fire & Marine Company. I took the proofs with me to the office and compared them with the form that was on the fire insurance companies' policies, and I found that the wording was not concurrent ,as I understood the word, meaning of the word concurrent—with the policies that I was supposed to adjust for them. I think I called the managers up on the phone and asked them to meet with me, which they did. I consulted with them about the so-called proofs of loss and the forms that were presented, and they asked me if I had ever seen the policies that were set forth on these printed forms on the back of the so-called proof of loss. I said that I hadn't. Well, why didn't I? I said I had asked for them but I had never seen them. Could I adjust a loss—

Mr. CAREY: Is it claimed that these conversations bind these gentlemen?

COURT:No.

Mr. CAMPBELL: We don't claim that at all.

Mr. CAREY: Instruct him not to do it.

COURT: State what occurred between you and Mr. Warren and Mr. Harrison about this matter—not what you talked about.

"Q. Don't state any conversation between youself and the insurance companies, that is all. You go ahead and tell the story as it took place between you and Mr. Warren or Mr Harrison—whoever represented Mr. Warren, that is all.

"A. The only method I had then of seeing those policies was to—oh, I am a little bit ahead of my story. Before we left Portland, I said to Mr. Warren that I could not adjust a loss with the corporation,that it would be necessary for him to have some authority authorizing him to sign proofs of loss and the other documents that would be necessary to attach to the proofs of loss and submit to the managers. Mr. Warren said that he already had that power delegated to him—I think by the by-laws—anyway I asked him to see the authorization it was shown me and I had a copy of it—such portions of it made as would in my opinion enable him to make proofs of loss, to submit to the managers. The next morning, if I remember correctly I wrote a notice requiring Mr. Warren to appear at my office to be examined under oath in order to fix where he would make claim for these various items that I hadn't been able to determine belonged in the several kinds of insurance, whether to the building, whether to the machinery and whether to the supplies. Mr. Warren came either that afternoon or the next morning—I also in my notice required him to bring the policies and any other data that he might have touching on the making of these proofs of loss. My recollection is that Mr. Warren and Mr. Harrison together came to my office and showed me what he termed a covering note, as I understand the

term, setting forth the wording of Lloyds policies, and brought me what I understand is a daily report of the wording of the St. Paul Fire & Marine policy. I asked for the polices. My recollection is that he said there were no policies used; that this is all they are, just those copies.

COURT: Are those the papers?

"A. I can't say whether those are the ones I saw or not.

COURT: That is all right. I don't want to interrupt your examination.

"A. I have the—I think I have the original paper that Mr. Harrison brought me. I think that is the copy.

COURT: Never mind, I don't want to interrupt you at all.

"Q. Do you know whether or not this is the copy Mr. Harrison brought you?

"A. I think it is, but I would not swear to it. I think this is the one.

"Q. It is a carbon copy of the one you have?

"A. My recollection is that I didn't see that document. My recollection is that what I saw of the Lloyds was about the size of that. I would not swear to it."

* * *

* * "Go ahead with your testimony. Don't state the contents of the letter.

"A. I can state this much of the contents, because this is what Mr. Harrison brought me when I asked him for a copy of it.

"Q. Mr. Harrison handed this to you, did he?

"A. Yes, not then—that was brought to me the next

morning.

Mr. CAREY: This is already in evidence. It is one of the plaintiff's exhibits.

Mr. CAMPBELL: Did you have the original or the copy?

Mr. CAREY: The original is in evidence. Produced here by Mr. Harrison.

"Q. He handed you this letter?

"A. Not this one. He simply read me the original of this letter; this is one portion of it. He read me the original of this letter.

"Q. When did you get this copy?

"A. I think this was handed in the next morning."

* * *

Mr. CAMPBELL: Yes, go ahead and state what conversation took place between you at the time this letter was read to you.

"A. Yes, sir. Did you want me to read the letter?

"Q. Yes, I want you to read the letter.

"A. I asked Mr. Harrison how much insurance he had on that plant. He told me $250,000 on the supplies and the salmon. I asked him what evidence he had of his authority to place that insurance, and he read me the original of which this was brought me as a copy of the letter. (Reading): "Portland, Oregon, February 25, 1910. M. C. Harrison & Co., Chamber of Commerce, City. Gentlemen: Fire insurance to protect up cargo two months after arrival and down cargo for three months before loading Fire insurance to be based on agreed valuation same as in the marine policies and in the event of loss the stock on hand at a particular date

is to be determined by cannery daily pack book. All salmon to be case on the midnight of the day when the tins are sealed. 48 tins to be 1 case. Kindly confirm this acceptance at your earliest convenience. Alaska Portland Packers' Association, per F. M. Warren, Jr., Secretary." I noticed the fire insurance to protect up cargo for two months after arrival was required. I said, "Mr. Harrison, is that a part of the $250,000?" "No, sir." "What is the insurance required?" "$80,000." 'Have you that policy?" "No, sir, it is cancelled." "I would like to see it" "It is cancelled." I said, We have some differences of opinion as to the technical terms of insurance. I would like to see that policy." He said he would get if for me.

Mr. CAREY: Excuse me, Mr. Jolly, are you talking about the policy on the up cargo?

"A. Yes, sir.

Mr. CAREY: For $80,000 that had expired?

"A. I don't know whether it had expired or not. I am talking about the $80,000.

Mr. CAREY: I am trying to get at whether it was on this policy on the up cargo.

"A. No, sir. It was about the $80,000.

Mr. CAREY: That policy is in evidence too.

"A. Beg pardon?

Mr. CAREY: That policy is in evidence, too.

Mr. CAMPBELL: That policy is not in evidence.

"A. I asked him to produce that policy for me to see it. I asked that he kindly give me a copy of this letter and also bring me over that policy for $80,000 that I might see it. My recollection is that he came in the

next morning with this copy. I noticed that it wasn't complete. It said on the bottom "parts of this letter referring to other matters agreed by Mr. Jolly need not be copied." I remember that Mr. Harrison said to me at that time that one portion of the letter—I don't remember whether it was the top or the bottom—referred to certain things that didn't belong to this particular insurance, and he asked that it be left off, and I consented that that could be left off in the copy. This is the copy he gave me. I asked him—whether Mr. Harrison brought this copy to me or not, I don't remember, or if Mr. Harrison brought it personally. Anyway, the next morning I saw Mr. Harrison and asked him for that $80,000 policy. Mr. Harrison said that he could not find it, that he had telegraphed to Portland for the cover. Mr Harrison showed me a telegram—

"Q. So the record may show it, what are you referring to now, Mr. Jolly?

"A. The telegram in reference to the disposition of this $80,000—

"Q. What paper are you referring to now?

"A. This paper?

"Q. Yes.

"A. It is the record I made from the telegram Mr. Harrison handed me.

"Q. At the time?

"A. At the time.

Mr. CAREY: The telegram is itself in evidence in different ways—one attached to Mr Jolly's report and the other the original paper.

COURT: Go ahead.

Mr. CAMPBELL: Go ahead and tell your story.

"A. Mr. Harrison handed me a telegram from which I made this copy reading as follows. This is a notation I made on it. "Harrison wired Sargent in Portland send me original covering note fire on cargo after discharge. And the reply read—reply to above from Sargent, Berlin, find no cover note issued covering fire risk Northbound supplies after discharge. Will put risk on register this week. Signed C. P. Sargent, and dated Portland, Oregon, October 6, 1910."

"Q. Now, Mr Jolly, is this telegram, "Plaintiff's Exhibit 59" a copy of that telegram?

"A. Read it to me, I will tell you.

"Q. Look at it, compare it.

"A. Are you asking me if that is the original?

"Q. Yes.

"A. That I saw?

"Q. Yes.

"A. I didn't see the original. I saw Mr. Harrison's copy of this; I didn't have the original.

"Q. Is that the telegram you referred to, the original or copy of it?

"A. Copy of that.

"Q. This is plaintiff's Exhibit 59, which reads: "Berlin find no cover note issued covering fire risk northbound supplies after discharge. Will put risk on register this week. Signed C. P. Sargent."

COURT: This is the one attached to some report introduced in evidence.

Mr. CAMPBELL: This is the original.

"A. I said "Mr. Harrison, I want to see that policy.

The policy says covers supplies"—no, hold on a minute. I wish you would give me the whole of the original of that letter if you can, please, Mr. Campbell. I would like to refer to that. The entire letter that was sent to Mr.—

"Q. The original of this?

"A. Yes, if you could find that.

"Q. Is this the one that you refer to?

"A. Yes.

"Q. Plaintiff's Exhibit 55?

"A. Yes.

"Q. Go ahead and tell your story as rapidly as possible.

"A. This letter reads: "M. C. Harrison & Company, Chamber of Commerce, City. Gentlemen: Referring to your quotation on our marine and fire insurance, season 1910, rate of $2.85 per hundred dollars would adadvise that we accept same with the following understanding." I think the rest of it is the same as I read you. That is the part left off of my—no, here it is. "You agree to cover up cargo to the amount of $80,000 if required, and down cargo to the amount of $250,000 if if required. Policy to cover up cargo five days before loading at Portland and lighterage risk in Alaska on both up and down cargo." I said, "I would like to see that $80,000 cover." That is when I was handed that telegram, that the cover never was issued. Then I asked if he could what date the vessel left Portland and the date it arrived in Alaska, to determine whether that overlapped onto our insurance of $27,500 or not. I can't say positively whether he gave me that information or not, but it was given me subsequently. Then I

told Mr. Harrison I would like to see those policies for that $250,000. Mr. Harrison said he had no policies, that the back of the proof of loss showed what he had, showed the wording of what he had. I said it didn't show me, I wanted to see the printed policy to know whether or not the printed part of the policy of the Lloyds or the St. Paul Fire & Marine or whatever he had in the way of insurance representing that $250,000. I wanted to see it because I wanted to know whether the printed conditions of the policies that I had and the printed conditions of the policies that I had never seen were concurrent. He didn't give me the policies and I never saw them until they came into this court room. I guess that is the end of my story.

"Q. Go ahead. Did't you have any further conversation with Mr. Warren or Mr. Harrison?

"A. I had further conversation with Mr. Warren, yes.

"Q. Go ahead and state them, Mr. Jolly.

"A. After Mr. Warren had filed his proofs of loss, after looking them over I discovered that Mr. Warren had again made the form on the proof of loss—he had made the form on the proof of loss read so that it covered building, and as I understood that the form only covered buildings, I wrote Mr. Warren—can you find that letter? I don't believe I have a copy of it here.

"Q. What is the letter Mr. Jolly?

"A. It is the first letter I wrote Mr. Warren about his proofs of loss—I don't remember the date—I guess I have it here, October 14, is that it?

"Q. Is this the letter that you refer to?

"A. I can't tell until I have read it over.

"Q. Plaintiff's Exhibit 32?

"A. Yes, I think this is it."

* * *

"Now, Mr. Jolly, at the close of your testimony yesterday I believe that you said that Mr. Warren did not meet you on the day following your arrival at San Francisco, which was the 30th—you leaving here the 28th, arriving there on the evening of the 29th, and having appointment with him on the 30th.

"A. Yes, sir.

"Q. I simply make this to get a starting point. And I understood you to say that he telephoned you in the afternoon of the 30th and said that he was personally going to submit his proofs of loss to the insurance companies.

"A. He did.

"Q. Now, did you write this letter, plaintiff's Exhibit 32, to Mr. Warren?

"A. I did.

"Q. And where did you send that to him?

"A. My recollection is I sent it to the Palace Hotel.

COURT: Is that dated October 1st?

Mr. CAMPBELL: October 1st, yes.

"Q. In this letter you have cited him to appear at your office on October 4, at 10:30 A. M.?

"A. Yes, sir.

"Q. Did he appear on that date?

"A. He did.

"Q And what was the subject of discussion between you on that date?

"A. I had asked for certain information and I think he replied to some of the questions I asked him and some that I said he would have to get some further data on.

"Q. Will you state whether or not there was any discussion between you as to his wiring to his son George Warren for further information?

"A. The telegram I had yesterday.

"Q. Did he afterwards secure those telegrams and present them to you?

"A. He did.

"Q. I will ask you to look at the telegrams attached to Plaintiff's Exhibit 33, and state whether or not those are the telegrams?

"A. I gave you the originals.

"Q. Are those copies of the telegrams?

"A. I presume they are. I gave you the originals yesterday.

"A. Yes.

COURT: May I see that, please?

"Q. Now, on the 6th of October, the next day, I will ask you whether or not you wrote the letter to Mr. Warren.

"A. I did.

"Q. That is plaintiff's Exhibit 34. And in that letter you refer to an enclosed affidavit, and I hand you plaintiff's Exhibit 35 and ask you whether or not the interrogatories which are set forth there are the interrogatories which you embodied in this affidavit which you sent in company with your letter of the 6th.

"A. They are.

"Q. I will hand you plaintiff's exhibit 33, not refer-

ring to the telegram attached thereto, but the letter, and ask you when that letter came into your possession, if you can recall?

"A. The eighth or ninth.

"Q. The eighth or ninth?

"A. Eighth or ninth.

"Q. I hand you plaintiff's Exhibit 36, which is the supplemental proof of loss, and ask you if you can recall when that came into your possession.

"A .I could not tell you the exact date. It was somewheres about the ninth or tenth, I should say. Handed to me by one of the managers.

"Q. Now, I will ask you whether or not, subsequent to the receipt of the supplementary proofs of loss you prepared this letter, Plaintiff's Exhibit 37, which was transmitted to Mr. Warren?

"A. I prepared it or I signed it?

"Q. Did you prepare it?

"A. Yes, sir, I did.

"Q. Now, Mr. Jolly—I will ask you, Mr. Jolly, whether or not you have any recollection of any personal conversation or any personal dealings with Mr. Warren subsequent to the interviews in your office on the 4th and 5th of October?

"A. I did not, to my recollection.

Mr. CAMPBELL: Now, if the Court please, the documents for the rest of the period speak for themselves.

"Q. Mr. Jolly, I will ask you to state whether or not you inspected any of the books or invoices of the plaintiff corporation so far as concerned the loss on the sal-

mon and supplies—

"A. I did not.

"Q. While you were here in Portland?

"A. I did not, no, sir.

"Q. I will hand you plaintiff's Exhibit 25, which is a list of invoices, and ask you when you first saw them.

"A. In this Court Room.

"Q. Since the commencement of this trial?

"A. Yes, sir.

"Q. Do you recall whether or not you examined any of the books of the plaintiff corporation while you were in Portland, touching the loss or cost of the materials which went into the machinery and buildings?

"A. I did.

"Q. Did you have any conversation with Mr. Warren on the train going to San Francisco concerning the proofs of loss on salmon and supplies?

"A. That I remember?

"Q. Did you have one? Did you have a conversation?

"A. On salmon and supplies?

"Q. Yes.

"A. I don't know that I could swear positively as to the salmon and supplies. We talked on the train over all the—

"Q. State what you can recall of the conversation in the train.

"A. On the salmon and supplies?

"Q. On the loss generally. Give your best recollection of what conversation took place on the train.

"A. I advised Mr. Warren either on the train or

before I left Portland that I had written the Managers calling attention to the various items on which Mr. Warren and I disagreed, which I claimed part should go to the buildings and part to the machinery and part to supplies, and that I expected as soon as we reached San Francisco I would be able to ascertain from the Managers whether my contentions as to where they should apply would be maintained or not. I told Mr. Warren that I would have to have the other policies before I could possibly make any apportionment or know anything about the application of the proofs of loss. I think that his stenographer had made up the items of the building and machinery here, and I told him that I would have my stenographer make out the forms on the buildings and machinery when I reached San Francisco—or that I had mailed her a copy, I could not tell you which now.

"Q. I will ask you to state, Mr. Jolly, whether or not in your experience as an adjuster of fire losses it has ever been the custom to make up the proofs of loss without an inspection of all the policies which are covering on the property insured.

Mr. CAREY: We object to that, if the Court please —

"A. I claim that it is a physical impossibility. I could not do it."

* * *

On cross examination, the witness testified:

"Q. Yes, but what were you here for as adjuster?

"A. To adjust the loss on buildings for one set of companies, to adjust the loss on machinery for another set of companies and to adjust the loss on these supplies

for another set of companies.

"Q. Then you were adjusting this loss on the supplies and on the salmon?

"A. I was."

* * *

Q. You went to see Mr Harrison before you came up to Portland, didn't you?

"A. I did.

"Q. What was your talk with him?

"A. Do you want me to relate?

"Q. Yes, sir, the conversation.

"A. I want to tell why I went there.

"Q. I don't care—

"A. I want the jury to know why I went to Mr. Harrison's office.

"Q. Just answer my question.

"A. I will not unless I am permitted to explain.

"Q. Did you know Mr. Harrison before that time?

"A I never saw him before in my life.

"Q. What did you say to Mr. Harrison when you went to see him?

"A. Will you permit me—

Mr. CAMPBELL: Answer his questions.

"A. What I said to Mr. Harrison?

Mr. CAREY: Yes, sir.

"A. First time I ever saw him in my life. Let me think of the exact wording I said to Mr. Harrison. I went to Mr. Harrison's office to ascertain if possible the amount of the insurance—

"Q. You say—you are stating what you went there for. I asked you what you said to Mr. Harrison, and I

would like you to state that if you can do so.

"A. I can pretty nearly.

"Q. Just state exactly what he said and what you said.

"A. I went to Mr. Harrison's office and I asked him what the total amount of insurance was. He said there was about $96,000. I asked him if he had heard—had any report of the fire. He said he had; that there was a wireless sent, and that it was a total loss. I said a total loss of how much; I think he said—I won't say whether he said cases of salmon—I won't say whether he said so many cases or so many dollars—I won't say now whether cases or dollars and cents; anyway he said the loss was about so much; I said "how much insurance is there?" He says there is $27,500 on supplies, and I think it was $96,000, all the insurance. I said,, "well, can't you give me the list of the companies and the amounts, so that I can report them to the companies; they want me to telegraph the amounts. He said, "No, the policies are in Portland" if I remember rightly. "I will give you those up there." I said, "Well, what kind of insurance is it?" Well, $27,500 of it was fire insurance and a certain amount was Lloyd's and a certain amount was St. Paul Fire & Marine. And I said, "Well what does the amount of the insurance amount to?" He says: "I don't know." I said, "That is very funny—you don't know what the amount of the insurance is?" "No, sir." I said "How do you figure that out?" Well, he said "That is my secret." "Your secret—what is your secret?" Well, he says "Some of the brokers have been trying for ten years to find that out." Well, I says "I

don't understand how there is a secret in the insurance business. If you have got a certain amount of insurance, or if you have a certain amount of insurance ordered. Don't you know how much insurance you have got?" "No, he didn't. He made this proposition, which I have always wondered at. I have it right here very clearly. He says: "you adjust and pay a total loss under your fire policy on the supplies." Yes. "Then what you have left of the residue, you apply that on the loss on the salmon." Yes. "Then I will issue enough insurance to make up the difference." I said, "Am I to understand you have authority to issue enough insurance after a fire to exactly cover the loss?" Yes. Well, I saw what his secret was.

"Q. So you and Mr. Harrison had quite a spicy little interview, did you?

"A. We sure did.

"Q. And you got quite angry at Mr. Harrison, didn't you?

"A. I did not. I was just surprised at his method, was all.

"Q. Isn't it a fact you and Mr. Harrison had a quarrel right then and there?

"A. No sir, we did not.

"Q. Isn't it a fact you still have it in for Mr. Harrison?

"A. Not in the least. I simply question his methods."

* * *

"Q. You said your trouble was you couldn't get the policies of insurance?

"A. I did say so, yes, and I say so now.

"Q. That was the reason you didn't adjust this loss?

"A. The only reason.

"Q. Weren't you told there were no policies of insurance on this marine insurance?

"A. I was.

"Q. And you were shown the cover notes, were you not?

"A. I was not at that time.

"Q. What, Mr. Jolly. You deny you were shown those?

"A. Most emphatically.

"Q. You swear that you were not shown them?

"A. You bring me a Bible and I will swear to it.

"Q. You heard what these witnesses said on that point, did you?

"A. I did.

"Q. And you dispute the whole of that?

"A. I certainly do.

"Q. Now, what would be the object—what would be the object of concealing from you those cover notes?

"A. Mr. Harrison's secret was the object all the way through this adjustment.

"Q. You think there is some mystery somewhere, don't you?

"A. I don't think anything about it—I know it.

"Q. You know it?

"A. That is pretty strong testimony but I know it.

"Q. That is what I want you to give—your own views of this.

"A. Sure.

"Q. I am not quarreling with you. I want your ideas.

"A. You can't quarrel with me, Judge.

"Q. You say these were not shown to you up to the day—

"A. I tell you positively they were not.

"Q. Was the amount of them shown you?

"A. No.

"Q. And you didn't know how much the insurance was?

"A. Didn't I tell you yesterday that I asked Mr. Warren the morning before I went to San Francisco, if he knew whether he had $250,000 with the $27,500 or without it? He said he didn't, and his son George said he didn't, so who could tell about the insurance?

"Q. Well, they were talking about insurance then?

"A. They were talking about the insurance they had, and they didn't know themselves.

"Q. Wasn't any statement given of the amount?

"A. I told you I asked for a statement, and if it was possible they had allowed Mr. Harrison to pack $250,000 around in his vest pocket, and had nothing to show for it, and that is the day Mr. Warren turned to George, and asked George if he remembered any statement being rendered to them that year, and George said, no; that for the first two years they did business with Mr. Harrison they did have a record, but that for that year they had no record. That is what they told me then. I don't know what they think they told me, but that is what they did tell me.

"Q. I am going to show you this "Plaintiff's Exhibit

56," and ask you whether or not these documents were not shown you at Portland or San Francisco?

"A. At San Francisco, yes.

"Q. When were they shown you there?

"A. After they had submitted their proof of loss; the first time I ever saw that wording was on the back of the proof of loss, after it was handed me by the general agent in San Francisco.

COURT: Was the document copied in full and attached to the proof of loss?

"A. I think I will go a little further, and tell you I never did see that document.

Mr. CAREY (To Court) Not the signature, but just the heading.

COURT: Am I right in understanding that that cover note—that the amount of insurance under that is the amount subscribed, and not $250,000?

Mr. CAREY: This didn't amount to $250,000. The St. Paul issued an excess policy to take up the balance.

COURT: I mean was the information on the proof of loss?

Mr. CAREY: Yes, it shows that—it shows a part of the $98,500.

Mr. CAMPBELL: That covering note, as I understand is 37,500 pounds, a part of the $250,000. Mr. Harrison testified that the day of the fire he had sent and order to London to get the denominator, $250,000, changed to 49,500 pounds.

Mr CAREY: They cabeled the change on the 18th day of August.

COURT: That is after the fire?

Mr. CAREY: Yes.

Mr. CAMPBELL: The change was made before Mr. Harrison advised them.

Mr. CAREY: August 18th, before there was any message.

COURT: After the fire, but before the message.

Mr. CAREY: As I understand this, the subscribers to this amount, as soon as the total amount is acquired —as much as they can of it,—it is reported.

COURT: What I am getting at is this: there was attached to the proof of loss the mere written part of that cover?

Mr. CAREY: That is all.

COURT: Did that show in any way the amount of insurance that had been taken under the cover?

Mr. CAREY: Yes, sir.

Mr. CAMPBELL: The cover read originally, as I understand it, 37,500 pounds, part of $250,000, and the cover notes attached to the proof of loss has the change made in it 6,750 pounds part of the 48,500 pounds.

Mr. CAREY: That is what it is. Signature Underwriters in London; 36,750 pounds; later endorsed to read part of 48,500 pounds. Value $4.50 per case.

COURT: You are reading proof of loss now?

Mr. CAREY: That is proof of loss, yes.

COURT: I was just trying to get—Mr. Jolly said that the first time he saw that document was when the proof of loss was shown him. I want to know whether that document as it now is—an exact copy—was attached to the proof of loss.

"A. Pardon me, Judge. Do you understand that

the first time I saw this document—there was a copy made. I never did see that.

COURT: That document wasn't copied entirely and attached to the proof of loss?

Mr. Carey: No.

"A. What first came into my possession was the wording of that document on the proof of loss.

"Q. You testified a great many times on your direct examination of making a demand for those policies.

"A. I think I demanded them every day. I think I made myself a nuisance around that office.

"Q. I don't doubt you did from what I heard about it.

"A. I guess you find I am the most persistent man; when I want a thing, I want it, and am going to have it.

"Q. When you used the term policy in your direct examination did you have reference to the policies themselves, or the cover notes?

"A. I don't know anything about cover notes, Judge. I deal with the printed conditions of the policy. I wanted the policies.

"Q. And what you were fussing about was because they didn't produce these Lloyd and St. Paul policies?

"A. Because they didn't produce the policies. I didn't know what they were. I didn't know until I got into court.

"Q. Didn't you know, and weren't you advised by them that the policies—the marine policies were not issued and were not customarily issued until after the loss?

"A. Please don't run me into marine insurance. I

don't know anything about that, and don't want to.

"Q. I asked what you were told by these people with reference to the policies.

"A. Mr. Warren in every instance told me that he didn't know anything about his insurance, that I would have to go to Mr. Harrison.

"Q. Now, let us come right to this particular question. I want an answer.

"A. What is you question?

"Q. That is, whether these people didn't inform you that the policies were not issued—

"A. The Warrens?

"Q. And that there were not policies. Either Harrison or the Warrens, I don't know which.

"A. Yes, sir, Harrison advised me the day before he left for San Francisco that he had some covers or something. I don't know what it was, but he had insurance of some kind he could issue.

"Q. Yes, he told you he had covers, and told you the amount of it?

"A. No.

"Q. He didn't—he didn't tell you that at Portland either?

"A. No, he didn't tell me that at Portland.

"Q. And he didn't give you copies of the cover notes and show you the covers at Portland?

"A. I never saw those covers in my life, until they came on the backs of the proofs of loss, after they had been filed by Mr. Warren and Mr. Harrison with the managers. I will swear to that till I am black in the face.

"Q. And you mean that you never even saw copies of it?

"A. Prior to the filing of those proofs of loss, I swear most emphatically, I did not, yes, sir.

"Q. Going back again just a moment. You say you were demanding those policies all the time?

"A. I was.

"Q. But you were informed, were you, Mr. Jolly, that there were no jolicies as yet?

"A. Mr. Harrison informed me so.

"Q. Then why were you asking for them all the time as you describe?

"A. I wanted to see the policies—wanted to see what conditions I was adjusting under.

"Q. And you wouldn't adjust this loss until you did see the policy?

"A. I could not.

"Q. Wouldn't pay any attention to the cover notes?

"A. I could not.

"Q. Now, these insurance companies, as a matter of fact, paid on the cover notes, didn't they?

"A. I don't know they have paid.

"Q. And to this day the St. Paul hasn't issued any policy, have they?

"A. I don't know that.

"Q. Don't you know the St. Paul has paid up this loss on just the cover notes?

"A. I certainly do not know whether anybody has paid or not.

"Q. I want it very clear now, that you didn't get any figures from Mr. Harrison at San Francisco be-

fore you came to Portland on the amount of the Lloyd or St. Paul Marine Insurance.

"A. He told me that there was a certain amount that he had issued, and could issue. I won't tell you positively what those figures were.

"Q. Did he give you the amount?

"A. I think he did, yes.

"Q. So that when you came to Portland, you really did have the amount of insurance?

"A. I really did not.

"Q. Ascertained from Mr. Harrison?

"A. No, I really did not, because Mr. Harrison, as I recall, told me there was $96,000 involved in the loss, and Mr. Warren told me he had $250,000 insurance, and I have been trying from that day to this to find where the difference between $96,000 and $250,000 was. If there was, it had to apply. If there wasn't, I wanted to know it, so I wanted to see the policies.

"Q. You still have that theory that there was $250,000 insurance outside the—

"A. It isn't a theory, it is what Mr. Warren told me.

"Q. In your adjustments and apportionments, you have figured various ways of apportioning the loss; some times you figure as though the $250,000 covers the insurance, and sometimes $250,000 plus $27,500—

"A. And sometimes some other way.

"Q. Yes, sometimes some other way.

"A. That is right.

"Q. You made about six different estimates?

"A. I think there was about fifty-nine that I sent

them, less than I did make.

"Q. You are still figuring?

"A. No, I have quit. I would have gone to an insane asylum if I had kept on figuring."

Testimony was offered, on behalf of plaintiff, tending to show that according to the custom of business, the cover notes issued for the insurance in Underwriters of Lloyd's, and in the St. Paul Fire and Marine Insurance Company, Marine Department, are treated as binding insurance between the insurers, issuing them, and the insured, from the date thereof, and that this insurance was paid to plaintiff before the action was begun.

Evidence was offered, on behalf of plaintiff, showing that plaintiff had paid the premiums mentioned in the policy of insurance issued by defendant, and that defendant had retained said premiums and had never offered to return the same to plaintiff.

Plaintiff also offered evidence in support of the supplemental complaint, tending to show that after action was begun, plaintiff had recovered certain salvage from the debris of the fire, and that plaintiff had thereafter sent letters to defendant and the other insurance companies having insurance, informing them of the same, and that the proceeds of the sale were applied by plaintiff in reduction of the amount which it claimed against defendant.

It was stipulated upon the trial that letters identical in form with Plaintiff's Exhibits 39, 40, 41 and 42, written to the National Union Fire Insurance Company, except as to the names of the companies addressed, were written and delivered to the other three defendant in-

surance companies, and that said Plaintiff's Exhibits 39, 40, 41 and 42 should be used as against this defendant as though the original, written and mailed to this defendant, had been produced and received in evidence.

It was stipulated upon the trial that Plaintiff's Exhibits 48 and 49 were identical in substance and form with Plaintiff's Exhibit 47, except that Plaintiff's Exhibits 48 and 49 were respectively written on behalf of the defendant company and Agricultural Fire Insurance Company.

Before submitting the case to the jury the Court ruled that M. C Harrison & Company were Plaintiff's agents and were not agents for the Defendants.

Testimony was introduced tending to show that in marine insurance it is customary to write "cover notes" first and it is not customary to write policies until after loss.

Wherever exhibits are referred to in this Bill of Exceptions as "marked Exhibit ....., etc. etc." such reference is intended to mean that such exhibits were offered and admitted and received in evidence.

Exhibits mntioned in this Bill of Exceptions, and offered in evidence on the trial, were in words and figures as follows:

[Plaintiff's Exhibit 27½.]

No. of Policy 550017 Amt. of Policy, $5000.00

PROOF OF LOSS

—to the—

GLOBE & RUTGERS FIRE INSURANCE COMPANY, OF NEW YORK.

BY YOUR POLICY OF INSURANCE NO. 550,-017 issued at your Agency at San Francisco, Cal., said insurance commencing at 12 o'clock, noon, on the 1st day of May, 1910, and terminating at 12 o'clock, noon, on the 1st day of May, 1911, you insured Alaska-Portland Packers' Association against loss and damage by fire, to the amount of Fife Thousand Dollars, according to the terms and conditions printed in said Policy, the written portion, together with a correct copy of all endorsements, assignments and transfers, being as follows, viz:

ALASKA PORTLAND PACKERS' ASSOCIATION.

Stock in Cannery.

$5000. On tin, tin cans, manufactured and in process of manufacture and on materials for making and finishing same; on salmon pickled, frozen and or canned, packed and in process of packing; on nets, rope, web, ice, twine, thread, salt, sugar, paper, lead, corks and lines, barrels, packing boxes, and labels and on all other products, materials and supplies incident to the canning, packing, freezing and pickling of, salmon;

All while contained in the frame buildings, additions, sheds adjoining and communicating, occupied as a salmon cannery, and situate at Nushagak, Bristol Bay, Alaska, and or on the wharves and platforms connected therewith.

POLICIES WITH:

St. Paul Fire & Marine Ins. Co.....$5000
Agricultural Insurance Co. 3000
Svea Fire Ins. Co 7000
National Union Fire Ins. Co. 7500
are identical with this form.

Permission is hereby granted to run overtime and at night, or cease operation entirely as the interest of the assured may demand, and to make additional alterations and repairs without notice to this company.

Permission granted to do lacquering in and on the premises, it being warranted by the assured that no more than one day's supply of lacquer, benzine, naphtha or other product of petroleum, except refined kerosene oil, shall be kept in or taken into the main cannery building, or other buildings within fifty (50) feet thereof, at any one time; that artificial lights, except electric lights, shall not be used in the building where the lacquering is being done; and that smoking or the use of open lights on the premises shall not be allowed.

In event of loss, the assured to furnish one adjuster for all companies concerned (should they elect to send one), transportation and subsistance, or cost of same, from Seattle to and at the assured's premises and return.

It is understood and agreed that the value of a case of salmon is $4.50, and that 48 one pound tins shall be taken as a case, whether lacquered, labeled

and or cased or not, but in case of loss before being lacquered, labeled and or cased, the cost of material for lacquering, labeling and or casing shall be deducted from said value in ascertaining amount of loss.

Warranted by the assured that no tarring or oiling of nets be allowed within the cannery building, nor nets kept in the cannery building after such tarring or oiling is done until after such nets have been used at least during one fishing season. All nets kept in cannery building to be hung on racks or suspended from the ceiling.

WATCHMAN CLAUSE—It is understood and agreed that during the packing season a watch shall be employed by the assured to be in and upon the premises every night and that when the packing season is over, one man shall be left on the premises, who shall have charge of same, and who shall reside in or near the above described premises;

It is understood that the within described cannery is known as the Alaska Portland Packers Association's Cannery.

OTHER CONCURRENT INSURANCE PERMITTED.

This slip is attached to and made a part of policy No. 550017 Issued by Globe & Rutgers Fire Insurance Company, of New York, To the Alaska Portland Packers' Association.

Loss, if any, payable to assured.

The total Insurance, whether valid or not, on said property, or any part thereof, at the time of the fire, including the above mentioned Policy, was One Hundred Fifty-two Thousand One Hundred Forty-one and 9|100 Dollars and no more. See apportionment sheet, or schedule of other insurance, hereto attached.

(Note.—In schedule of other Insurance, give the name of each Company, date and expiration of Policy, rate of premium and the entire written portion of each Policy and all assignments, endorsements or transfers thereon.)

A fire occurred on the 10th day of August, A. D., 1910, at about the hour of 4 o'clock A. M., by which the property insured was destroyed, or damaged, as herein set forth, and which originated as follows: from cause unknown.

The Cash Value of each specified subject thus situated and insured under the aforesaid Policies at the time of loss, the Loss and Damage by said fire on the same, for which claim is hereby made, the Total Insurance, the Total Claim for loss under the Entire Insurance, and the insurance and claim Under this Policy, are as follows:

Property	Total Sound Value	Total Loss and damage	Total Insurance	Total Claim under Insurance	Insurance under this Policy	Claim under this Policy
Supplies &c.	21,659.09	21,659.09	21,659.09	21,659.09		
Salmon	130,482.00	125,610.44	130,482.00	125,610.44	5,000.00	4,960.36
Totals	$152,141.09	$147,269.53	$152,141.09	$147.269.53	$5,000.00	$4,960.36

And the insured claims of and agrees to accept from the above named INSURANCE COMPANY, by reason of said loss, damage and Policy of Insurance, the sum of Four Thousand Nine Hundred and Sixty 36|100 ($4960.36) Dollars, in full satisfaction of all liability under said Policy, for said loss and damage.

The property so insured, and on which this claim for loss is made, was owned at the time of fire as follows: By insured $ all; Held in trust or on commission, for none, and no other person or persons have any title to or interest therein.

At the time of the fire, the title of insured to the ground on which the building described in the Policy stood, was that of..... (State if leasehold or fee simple.)

(Note.—This need not be stated if Insurance was only on contents of building.)

The property insured was incumbered as follows: none.

No assignment, or transfer, or incumbrance, or change of ownership or occupancy of the property described has been made since the issue of said policy, except as follows: none.

The building insured, or containing said property was occupied in its several parts by the parties hereinafter named, and for the following purposes, to wit: as a salmon cannery and for no other purpose whatever.

The Total Value of Property saved is $4871.56, as per statement attached hereto, marked Schedule B.

The said fire did not originate by any act, design or procurement on the part of the insured, nor on the part of any one having any interest in the property insured, or in the said Policy of Insurance; nor in consequence of any fraud or evil practice done or suffered by said insured; nothing has been done by or with the privity or consent of the insured to violate the conditions of the policy, or to render it void; and no articles are mentioned herein but such as were in the building damaged or destroyed, and belonging to and in the possession of the said insured at the time of the said fire; no property saved has been in any manner concealed, and no attempt to deceive the said company as to the extent of said loss or otherwise has in any manner been made. Any other information that may be required will be furnished on call and considered a portion of these proofs.

It is furthermore understood and agreed that all bills, invoices, schedules and statements made by the insured and attached to this Proof of Loss are to be incorporated into this proof and are hereby duly sworn to and made a part hereof.

It is hereby agreed that neither the furnishing of this blank and the filling out of the same by the adjuster, or any agent of the said Insurance Company, nor the action taken by said Insurance Company to investigate the amount of loss and damage, nor the acceptance of this statement by the said Insurance Company on showing made as of date hereof, as above stated, shall be claimed to be any waiver of the

provisions of this sworn statement or of the conditions of said policy, which are hereby re-affirmed as conditions precedent to the payment of the loss; and further, that there can be no waiver of the provisions of this agreement or of the conditions of said policy, otherwise than in writing, signed by a duly authorized agent of said Insurance Company.

Witness my hand at San Francisco, Cal., this 30th day of September, 1910.

ALASKA-PORTLAND PACKERS' ASSOCIATION, A CORPORATION.

Frank M. Warren,
President, duly authorized.

Personally appeared Frank M. Warren, signer of the foregoing statement who made solemn oath to the truth of the same, and that no material fact is withheld that the said Insurance Company should be advised of, before me, this 30th day of September, 1910.

[Seal.] ANNE F. HASTY,

Notary Public in and for the City and County of San Francisco, State of California.

APPORTIONMENT

Showing Amount Insured by and Claimed of Each Company.

No. of Policy.	Date of Expiration.	Name of Company.	Supplies &c. Loss $21,659.09 Insured	Supplies &c. Loss $21,659.09 Claimed	Salmon Loss $125,610.44 Insured	Salmon Loss $125,610.44 Claimed	Insurance by each Company	TOTALS Total Loss on Items $147,269.53 Claimed under each Policy
As Per Form A attached		On Salmon, Supplies, etc.						
96,051	May 1, 1911	Svea Fire Ins. Co.	$ 5,513.22	$ 5,513.22	$ 1,486.78	$ 1,431.27	$ 7,000.00	$ 6,944.49
550,017	May 1, 1911	Globe & Rutgers Fire Ins. Co.	3,938.02	3,938.02	1,061.98	1,022.34	5,000.00	4,960.36
25,144	May 1, 1911	Agricultural Ins. Co.	2,362.81	2,362.81	637.19	613.40	3,000.00	2,976.21
230,898	May 1, 1911	St. Paul F. & M. Ins. Co.	3,938.02	3,938.02	1,061.98	1,022.34	5,000.00	4,960.36
10,202	May 1, 1911	National Union Fire Ins. Co.	5,907.02	5,907.02	1,592.98	1,533.50	7,500.00	7,440.52
As per Form B attached.		On Salmon Only.						
Open Cover No number.	May 9, 1911	Underwriters in London			98,015.05	94,355.64	98,015.05	94,355.64
As per Form C attached.		On Salmon Only.						
Open Cover No number.	May 15, 1911	St. Paul F. & M. Ins. Co.			26,626.04	25,631.95	26,626.04	25,631.95
			$ 21,659.09		$130,482.00		$152,141.09	$147,269.53
				$ 21,659.09		$125,610.44		
							$147.269.53	

Total Salvage.....$ 4,871.56

Copy.

CITY OF PORTLAND,

County of Multnomah, State of Oregon—ss.

I, GEO. A. WARREN, being first duly sworn, depose and say: I am a Stockholder of the Alaska Portland Packers' Association. I was at Nushigak, Bristol Bay, Alaska, during the canning season of 1910, inspecting the work of canning salmon, and state that in the early morning of August 10th about four A. M., a fire was reported by some Chinamen to our superintendent, and as soon as he saw the fire, the front end of the cannery building was in flames. The fire spread so rapidly that it was impossible to do anything at all to check its progress, and also impossible to get in to save any of the salmon. The building and all of its contents of salmon, materials and supplies, together with the boiler and engine house, net house and their contents and wharf were burned and became a total loss. No salmon remained sound. the origin of the fire could not be ascertained. The number of cases packed for the season amounted to 52,402 cases, and there had been loaded on the ship, including several barges which had been laden the day before, but which had not yet been towed to the ship nor laden thereon, amounted to 23,406 cases, and there were burned in the cannery 28,996 cases amounting to a total insured value of $130,482, less a credit of $4871.56, which we give to the underwriters because certain cans having been sealed had not been lacquered nor labeled nor cased.

(Signed) GEO. A. WARREN, [Seal.]

Subscribed and sworn to before me, this 23rd day of Sept., 1910.

(Signed) CURTIS SARGENT, [Seal.]

Notary Public in and for the City of Portland, County of Multnomah, State of Oregon.

INVENTORY OF CANNERY SUPPLIES BURNED.

Sanitary Cans, 105504	@	$16.50	$ 1,740.81
Ordinary Cans, 451200	@	15.024	5,876.42
451,200 Tops—170 boxes			
13½ x 20 270|440	@	4.279	1,882.76
Chips 2 Tons	@	44.00	88.00
Boxes 36566	@	14.025	5,128.38
Extra Tops, 9000	@	.0275	247.50
1 bbl. Lubricating Oil			14.71
Pipe and Fittings			104.24
Belting and Hose			124.57
Salt 10 Tons	@	9.35	93.50
Salt 5 Tons	@	6.05	30.25
Coal 100 tons	@	8.25	825.00
1 Drum Caustic Soda			32.12
Tin 66 Pigs 6600 lbs	@	36.3c	2,395.80
Lead 7400 lbs.	@	5.44	402.56
Copper 3 Bars			62.66
Hanging Line 610 lbs.			160.93
Trap Web 103 lbs.			138.68
Zinc 1750 lbs.			115.50
Gill Nets 83½			1,742.41
Floats 10000			198.00
Lead Line 700 lbs.			137.47
Nails 20 Kegs 5 D			68.20

Coal Oil 220 Gals.	26.62
2 Drums	22.00
	$21,659.09

STATE OF OREGON,
County of Multnomah—ss.

I, FRANK M. WARREN, being first duly sworn, depose and say that I am President of the Alaska-Portland Packers' Association, and that the above is as near an accurate inventory as can be made of the supplies burned in the cannery of the Alaska-Portland Packers' Association at Nushagak, Alaska, on August 10th, 1910, and that the same were a total loss except that there may be in the marsh some melted tin, lead, copper and or zinc, but the same cannot be used in our business.

(Signed) FRANK M. WARREN, [Seal.]

Subscribed to and sworn to before me this 24th day of September, 1910.

(Signed) CURTIS SARGENT, [Seal.]
Notary Public for State of Oregon.

SALVAGE FROM SALMON.

1171808 Labels @ 99c per M	$1,161.09
25000 Boxes $14.025c	3,506.25
4 Bbls Lacquer $26.40	105.60
3 Drums Naphtha 330 gals. @ 13.75c	45.38
4 Drums Oil 440 gals. @ 12.01c	53.24
	$4,871.56

STATE OF OREGON,

County of Multnomah—ss.

I, Frank M. Warren, being first duly sworn, depose and say that I am President of the Alaska Portland Packers' Association, a corporation operating a salmon cannery at Nushagak, Alaska, and that out of the total pack of salmon of 52402 cases, about as near as can be estimated, cans equal to 25000 cases had not been put in the cases at the time of the fire on August 10, 1910, and therefore not entirely completed and that a portion of these cans, which although all completely sealed, had not been lacquered and had not been labeled, and that the materials described above were sufficient to fully complete the same.

(Signed) FRANK M. WARREN, [Seal.]

Subscribed and sworn to before me this 24th day of September, 1910.

(Signed) CURTIS SARGENT, [Seal.]

Notary Public for State of Oregon.

London, May 9, 1910.

This is to certify that insurance has been opened with the undersigned underwriters and that policies will be put forward as interest may appear per "Berlin" on Salmon warranted free from particular average unless the vessel be stranded sunk burnt on fire or in collision, etc. from Cannery on Bristol Bay to Pacific Coast at 2½%. Interest on deck held covered at double premium. Including fire risk from midnight of date of sealing of tins or barrels at 1|8 per cent per month, but not exceeding 90 days Part of $250,000. Warranted free from capture, seizure and

detention and the consequence of any attempt thereat, piracy and barratry excepted and other consequences of hostilities.

Signature underwriters in London, £36750; later endorsed to read: Part of £48500; value $4.50 per case.

This on risks in cannery in London under above cover $98,015.

San Francisco, May 15, 1910.

It is understood and agreed that this cover attaches to salmon only as per face hereof, the amount of risk at the time of loss or otherwise to be determined in the following manner:

1st. Underwriters in London in the amount of L36.750—$177.135, cover 177.135|250.000ths of the gross value at $4.50 per case and $8.00 per barrel on all salmon on the cannery premises.

2nd. Underwriters in the amount of $27.500. as follows: Globe & Rutgers, $5,000., Svea, $7.000., Agricultural, $3,000., National Union, $7.500., St. Paul, $5.000., cover all supplies remaining ex "BERLIN," out of shipment in the amount of $76.009, season of 1910.

3rd. Such portions of policies of the Globe & Rutgers, $5.000., Svea, $7.000., Agricultural, $3.000., National Union, $7,500., St. Paul, $5,000., as are not required to cover supplies as per paragraph two, are to attach to salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel.

4th. After deducting the value of all salmon as would be covered by the intended interpretation of

paragraphs one and three, from the gross value of all salmon on the cannery premises, the remainder of such value of salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel, shall be covered by this insurance, not exceeding the sum of 45.165.

Rate 1 per cent.

This on risks in cannery in St. Paul Fire & Marine Ins. Co., under this cover $26626.04.

CITY OF PORTLAND,

County of Multnomah, State of Oregon—ss.

I, GEO. A. WARREN, being first duly sworn, depose and say: I am a Stockholder of the Alaska Portland Packers' Association. I was at Nushigak, Bristol Bay, Alaska, during the canning season of 1910, inspecting the work of canning salmon, and state that in the early morning of August 10th about four A. M., a fire was reported by some Chinamen to our superintendent, and as soon as he saw the fire, the front end of the cannery building was in flames. The fire spread so rapidly that it was impossible to do anything at all to check its progress, and also impossible to get in to save any of the salmon. The building and all of its contents of salmon, materials and supplies, together with the boiler and engine house, net house and their contents and wharf were burned and became a total loss. No salmon remained sound. The origin of the fire could not be ascertained. The number of cases packed for the season amounted to 52.402 cases, and there had been loaded on the ship, including several barges which had been laden the day be-

fore, but which had not yet been towed to the ship nor laden thereon, amounted to 23406 cases, and there were burned in the cannery 28996 cases amounting to a total insured value of $130,482., less a credit of $4,-871.56, which we give to the underwriters because certain cans having been sealed had not been lacquered nor labeled nor cased.

(Signed) GEO. A. WARREN, [Seal.]

Subscribed and sworn to before me, this 23rd day of Sept., 1910.

(Signed) CURTIS SARGENT, [Seal.]

Notary Public in and for the City of Portland, County of Multnomah, State of Oregon.

INVENTORY OF CANNERY SUPPLIES BURNED.

Sanitary Cans, 105504	@	$16.50	$ 1,740.81
Ordinary Cans, 451200	@	15.024	5,876.42
451200 Tops—170 boxes			
13½ x 20 270|440	@	4.279	1,882.76
Chips 2 Tons	@	44.00	88.00
Boxes 36566	@	14.025	5,128.38
Extra Tops, 9000	@	.0275	247.50
1 Bbl. Lubricating Oil			14.71
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Belting and Hose			124.57
Salt 10 Tons	@	9.35	93.50
Salt 5 Tons	@	6.05	30.25
Coal 100 tons	@	8.25	825.00
1 Drum Caustic Soda			32.12
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Lead 7400 lbs.	@ 5.44	402.56
Copper 3 Bars		62.66
Hanging Line 610 lbs.		160.93
Trap Web 103 lbs.		138.68
Zinc 1750 lbs.		115.50
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Floats 10000		198.00
Lead Line 700 lbs.		137.47
Nails 20 Kegs 5 D		68.20
Coal Oil 220 gals.		26.62
2 Drums		22.00
		$21,659.09

STATE OF OREGON,
County of Multnomah—ss.

I, Frank M. Warren, being first duly sworn, depose and say that I am President of the Alaska Portland Packers' Association, and that the above is as near an accurate inventory as can be made of the supplies burned in the cannery of the Alaska Portland Packers' Association at Nushagak, Alaska, on August 10th, 1910, and that the same were a total loss except that there may be in the marsh some melted tin, lead, copper or zinc, but the same cannot be used in our business.

(Signed) FRANK M. WARREN, [Seal.]

Subscribed to and sworn to before me this 24th day of September, 1910.

(Signed) CURTIS SARGENT, [Seal.]
Notary Public for State of Oregon.

SALVAGE FROM SALMON.

1171808 Labels @ 99c per M	$1,161.09
25000 Boxes 14.025c	3,506.25
4 Bbls. Lacquer $26.40	105.60
3 Drums Naphtha 330 gals. @ 13.75c	45.38
4 Drums Oil 440 gals. @ 12.01c	53.24
	$4,871.56

STATE OF OREGON,
County of Multnomah—ss.

I, Frank M. Warren, being first duly sworn, depose and say that I am President of the Alaska Portland Packers' Association, a corporation operating a salmon cannery at Nushagak, Alaska, and that out of the total pack of salmon of 52402 cases, about as near as can be estimated, cans equal to 25000 cases had not been put in the cases at the time of the fire on August 10, 1910, and therefore not entirely completed and that a portion of these cans, which although all completely sealed, had not been lacquered and had not been labeled, and that the materials described above were sufficient to fully complete the same.

(Signed) FRANK M. WARREN, [Seal.]

Subscribed and sworn to before me this 24th day of September, 1910.

(Signed) CURTIS SARGENT, [Seal.]
Notary Public for State of Oregon.

[Endorsement on Back]: Claim No. 27½, Proof of Loss, Globe & Rutgers Fire Insurance Co., of New York. Insured Alaska-Portland Packers'

Association, Agency San Francisco, Cal. Policy No. 550017; Amount of Policy $5000.00; Amount claimed $4960.36; Amount awarded $.....; Date of fire, August 10th, 1910; Proofs received .....; Date of payment ..... Adjuster ..... .

Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 32.]

San Francisco, Cal., Oct. 1st, 1910.

Mr. Frank M. Warren, President,
Alaska Portland Packers' Assn., Inc.,
San Francisco, Cal.

LOSS AT NUSHAGAK, ALASKA

Dear Sir:—

Your favor of Sept. 30th, 1910, enclosing what perport to be Proofs of Loss to the several Companies in interest, have been received by the Companies herein designated, and the papers in connection with such claim have been referred to me for examination and reply.

TOTAL INSURANCE.

I note representation of total insurance, whether valid or not, on said property at time of fire, as being, One Hundred, Fifty-two Thousand, One Hundred Forty-one and 9|100 Dollars, on stock and supplies.

UNDESCRIBED UNDERWRITERS IN LONDON

are accredited with "Open Cover" on Salmon only, "From midnight of date of sealing of tins or barrels, not exceeding 90 days, part of $250.000."

ST. PAUL F. & M. INS. CO.

Open cover, on salmon only, $26,626.04 (as apportioned) from reading of form attached, this cover seems to provide for Lloyds insurance of 177.135|-250.000.

Stock Companies policies of $27.500
St. Paul F. & M. Co. not exceeding 45.156

$322.665

Total insurance provided for $322.665

APPORTIONMENT.

Is based on the wording of the covers, and specific contract with the St. Paul F. & M. I. Co., of which the stock companies have not before been advised as this is a loss of stock and supplies on land, it would seem just to ascertain the status of the several contracts as related to the purely fire insur-

ance contracts, this can only be determined by the contracts as made with the insured corporation, and in order to pass judgment on such contracts, you are requested to comply with policy conditions requiring:—

"Shall produce for examination all books of account, bills, invoices and other vouchers * * * at such reasonable place as may be designated.

Kindly present all contracts of insurance or covers referring to stock or supplies for which claim is presented in so called proofs of loss, at the office of E. J. Jolly, Room 606 Royal Building, San Francisco, Cal., at the hour of 10:30 A. M. on Tuesday, October 4th, 1910, for examination and to permit extracts and copies thereof to be made as provided by policy conditions.

STOCK INSURED.

Policy wording contemplates cover of stock and supplies in the frame building, additions,

sheds adjoining and communicating occupied as a salmon cannery.

Evidence submitted indicates Hanging line, Trap Web, and Gill Nets in the net house, which did not adjoin and communicate with the described salmon cannery.

STOCK NOT DESTROYED.

Claim presented for total loss of lead, copper, zinc, caustic soda, coal, tin, pipe and fittings and other non-destructible supplies, and extras, and for belting and hose usually insured with the machinery item of policies, must be questioned, and satisfactory evidence presented that effort was made to recover or save such described property at or after the fire? or of total distruction of the values as presented.

APPORTIONMENT OF SALVAGE.

There is no evidence attached to so called proofs that covers issued, provide for participation in salvage, and the evidence of supplies saved is not sufficient.

SALVAGE. There is no allowance for salvage although there is attached to so called Proofs, a statement of supplies saved, it is not stated whether such supplies were removed from the burning building, or were stored in other buildings or locations on the property.

EXAMINATION. In order to set forth all of the facts pertinent to the claim for loss, you are requested, as provided in policy, to present yourself at the office of E. J. Jolly, Room 606 Royal Building, San Francisco, Cal., on Tuesday morning, October 4th, 1910, at the hour of 10:30 A. M., to comply with requirement of policies as follows:

"And submit to examination under oath by any person named by this company."

Respectfully submitted,

E. J. JOLLY,

Adjuster.

Authorized by, and acting for

National Union Fire Insurance Co.,

Wm. A. Drennan, Mgr.

Svea Insurance Company,

Globe & Rutgers Fire Insurance Co.,
Agricultural Insurance Company,
St. Paul F. & M. Insurance Co.,
Edward Brown & Sons, General Agents.
Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 33.]

Received Oct. 7, 1910.
Answered ....

Edwd. Brown & Sons.
San Francisco, October 6, 1910.

Globe & Rutgers Fire Insurance Co.,
San Francisco.

Dear Sirs:

LOSS AT NUSHAGAK, ALASKA, AUG. 10, 1910.
YOUR POLICY NO. 550017:

Referring to questions written by Mr. E. J. Jolly, your adjuster, and approved by your Messrs. Edward Brown & Sons, I beg to say seriatum:

TOTAL INSURANCE:

I had arranged with my broker for a total of $250,000.

UNDERWITERS IN LONDON:

The original open cover signed by the Underwriters has been produced and exhibited to and examined by your Mr. Jolly. As to what it covers it speaks for itself.

ST. PAUL FIRE MARINE INSURANCE CO.:

The original open cover in this company has been produced and exhibited to and inspected by your Mr. Jolly and as to what it covers it speaks for itself.

APPORTIONMENT:

I feel that I am not competent to discuss this question, but to the mind of a layman, whose intent and agreement was to insure and pay premium on 100 per cent and no more, an assured should not suffer loss because of disagreement as to how loss should be apportioned between underwriters when it is admitted by you that the policies in question all cover property on which loss is claimed—there must be insurance law clearly defined somewhere which will give assured proper remedy against each underwriter.

STOCK INSURED:

I note what you say your policy contemplated, but, aside from what it may have contemplated, it also states—"and or on the wharves and platforms connected therewith." I have never claimed that all the articles mentioned as lost were in the main building, but have stated to you specifically that several items were in the net house, which has been further affirmed by telegrams to me, the originals of which have been given to your Mr. Jolly and copies are herewith attached, and whether the articles were in the cannery proper, boiler house, engine house, net house or at any point on the wharves or platforms, I claim the loss because it is covered by your policy.

STOCK NOT DESTROYED:

I do not admit the signification which this topic conveys, but merely follow Mr. Jolly's letter for the purpose of answer. As far as I am advised, every item for which loss has been claimed is a total loss to me. There may be some value remaining in the marsh out of the lead, copper, zinc and tin, but there is no value in either of these articles for my purpose or any value any further than some price which I might secure for whatever may remain after I have incurred the expense of getting it out and bringing it down and selling it! but for my own use it is quite impossible for me to do anything with it, even though it were given to me. Our ship was kept at the cannery several days after the fire, largely for the purpose of ascertaining the condition of things as they remained and after the ship left two men were left in charge with instructions to employ native labor at a favorable time and clear away debris.

APPORTIONMENT OF SALVAGE:

This is another technical question upon which I do not profess to be expert, but it would appear to a layman that if an insurance company or any underwriter was interested in a piece of property from which something was saved or against which there was a proper credit that if not as a matter of law, certainly as a matter of justice, the insurer ought to be entitled to his proper proportion of what was saved.

As to the evidence that you mention under this topic: We have stated the number of cases that were

still required, the number of labels that were still required and the amount of lacquer and oil required in order to complete all those cans and fully case them. If there is any further evidence that you could think possible for us to furnish, and you will kindly name it, I shall try to see that you get it.

SALVAGE:

I note your remarks under this heading, and beg to say that the statement attached to my proof distinctly showed what it was for, viz:—that it was the boxes and the labels and the lacquer and the oil necessary to complete the salmon for which claim had been made valued at $4.50 per case, and that statement was not a statement of supplies saved from the fire or removed from the buildings, as there were no supplies saved or removed from either of the buildings burned.

EXAMINATION:

Upon the call of your Mr. Jolly I appeared at the place and minute on the day requested by him and carried all invoices, policies, books and other evidence required by him and submitted the same and answered his questions, except I could not and cannot now name the value, if any, remaining in the zinc, lead, copper and tin; for my use they are worth nothing.

Fortunately, the salmon burned is valued in the policies. It appears that there is some question as to the value of the supplies and materials burned and in order that these questions may be removed and doubts resolved, I hereby call for an appraisement on

all those articles other than the salmon and name Mr. J. P. Treanor as my representative and beg that you will name yours immediately so that the entire matter may be determined at once.

Yours very truly,

ALASKA-PORTLAND PACKERS' ASS'N.

FMW|EM By Frank M. Warren,
President.

THE WESTERN UNION TELEGRAPH CO.
Incorporated
24,000 Offices in America.
Cable Service to All the World.
ROBERT C. CLOWRY,
President and General Manager.

Receiver's No. | Time Filed. | Check

SEND the following message subject to the terms on back hereof, which are hereby agreed to.

579 po. ss. 35. rush

Portland, Ogn. Oct. 4-10.

Frank M. Warren,

Care Palace Hotel, San Francisco, Cal.

Thirty seven hundred twelve cases on barges at time of fire. Net house was built on same wharf as net racks. Hanging line and floats were in net house. Trap web was on net rack.

321P GEO. A. WARREN.

—Read the Notice and Agreement on Back.—

THE WESTERN UNION TELEGRAPH CO.
Incorporated
24,000 Offices in America.

Cable Service to All the World.
ROBERT C. CLOWRY,
President and General Manager.

Receiver's No. | Time Filed. | Check
SEND the following message subject to the terms on back hereof, which are hereby agreed to.
51. PO.FO. 33

Portland, Ore. Oct. 5th, 1910.

F. M. Warren,
Care Palace Hotel,
San Francisco, Cal.

Belting seventy four dollars thirty eight cents hose fifty dollars nineteen cents. Wharf and net racks connected by continuous wharf to main cannery at Boiler room and by elevated roadway to front door.

GEO. A. WARREN.

—Read the Notice and Agreement on Back.—

THE WESTERN UNION TELEGRAPH CO.
Incorporated
24,000 Offices in America.
Cable Service to All the World.
ROBERT C. CLOWRY,
President and General Manager.

Receiver's No. | Time Filed. | Check
SEND the following message subject to the terms on back hereof, which are hereby agreed to.
538. PO. CA.....6

Portland, Ore. Oct. 5th, 1910.

Mr. F. M. Warren,
Palace Hotel, San Fran., Calif.

Lead line was in net house.

GEO. A. WARREN.

1210. PM.

—Read the Notice and Agreement on Back.—

Filed. Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 34.]

Residence Phone Piedmont 626 — Office Phone
Residence 502 Vernon St., — Douglas 4916
Oakland, Cal. — San Francisco, Cal.

E. J. JOLLY
General Adjuster and Accountant
Royal Insurance Bldg.
San Francisco, California

San Francisco, Oct. 6th, 1910.

Mr. Frank M. Warren,
Palace Hotel,
San Francisco.

Dear Sir:

Since received telegrams, and other important data from Broker Harrison, I have had the second meeting of the Managers of the Companies in interest, and am submitting you the enclosed affidavit, touching the vital points in question, which you will kindly complete, and I will thank you if convenient to meet me in my office, in the Royal Building at 10 o'clock

tomorrow, Friday, October 7th, and greatly oblige.

Yours very truly,

E. J. JOLLY,
Adjuster.

Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 35.]

STATEMENT OF FRANK M. WARREN.

City & County of San Francisco,
State of California—ss.

Frank M. Warren, being first duly sworn, deposes and says:—

That he is the President of the "Alaska-Portland Packers' Association, Incorporated, of Portland, Oregon, that he is the signer of certain documents purporting to be proofs of loss as required by the policies of certain insurance companies under which claim for loss is made for the destruction of certain property at Nushagak, Alaska, owned by the before mentioned Alaska-Portland Packers' Association, Incorporated, and that he is familiar with the evidence as set forth in the described so called proofs of loss, and that the answers as made to questions following, are correct to the best of his knowledge, and belief:—

Q. Are you aware that the forms attached to so called proofs of loss, and the forms attached to policies in your possession do not agree as to the wording of policies, and that they differ in the particular, that the forms attached to proofs are made to cover build-

ing, and attached to policies are singular in cover, and describes the salmon cannery building, additions &c, only, this makes a material difference in adjustment of loss, and you are requested to state your understanding of the cover as set forth in forms attached to policies issued.

A. The letter "s" should be eliminated from the form marked "A", so that the correct reading will be building and not buildings.

Q. Is it your understanding that all of the nets were stored in the net house, detached from the cannery building, (as shown in photograph designated "Exhibit A") and that none of the nets, hanging lines, trap web or floats were stored in the cannery building proper.

A. I have no personal knowledge as to where the goods were stored. The affidavits attached to Proof of Loss and telegrams handed to you since furnish the best evidence I have.

Q. Are you advised as to whether search was made in the debris for tin, lead, zinc, and copper for which claim is made as a total loss, to ascertain if such metals were melted, or still in pigs, or if melted, were run together, or are susceptible of being separated and remelted and remoulded for use.

A. I do not know just what search or examination was made—I was not present.

Q. Are you advised whether supplies for which claim is made, were all contained in the cannery building destroyed, or were some of the described supplies contained in other buildings on the premises?

A. The affidavits attached to the Proof of Loss and the original telegrams handed to you yesterday is the best evidence that I can give.

Q. If such described supplies were in other buildings or locations on premises, were they made a part of inventory presented and attached to so called proofs of loss?

A. I have no personal knowledge other than what has been told to me, which is pretty fully described in the affidavit attached to the Proofs of Loss and in the telegrams handed to you yesterday.

Q. What is the amount claimed by you as the loss and damage to supplies contained in described cannery building, not removed prior to or after the fire?

A. The amount stated in Proof of Loss which I have served upon each respective company plus the amount of any amendments to such proof as I may file.

Q. What is the amount allowed by you as the value of supplies not destroyed, removed from the described cannery building.

A. I have been advised that no property whatever was removed from either building burned.

Q. What is the amount allowed by you as the value of supplies contained in other buildings on premises?

A. Adjuster claims that, policies only cover supplies in cannery building, if that is correct, underwriters are entitled to no allowance for supplies in other buildings.

Q. There is no allowance for salvage although

there is attached to so called proofs, a statement of supplies saved, it is not stated whether such supplies were removed from the burning building, or were stored in other buildings or locations on the property.

A. Salvage shown is value of supplies necessary to complete packing of salmon and these were also burned and are claimed under policies covering on supplies.

Q. What were the number of cases packed, completely cased, after midnight in cannery, at date of fire?

A. I do not know personally.

Q. What were the number of cases packed and on barges, lying at wharf at time of fire.

A. I do not know personally.

Q. What were the number of cases packed, and on ship "Berlin", at time of fire?

A. I do not know personally.

Q. What were the number of cases of packed salmon delivered ex ship "Berlin" at Portland?

A. I do not know personally, but it was represented to me 23,406 cases.

Q. What was the value of supplies necessary to complete lacquering, labeling, and casing of uncompleted cases of salmon for which claim is made of the twenty eight thousand, nine hundred and ninety six cases claimed destroyed by fire?

A. It is represented to me $4,871.56.

Q. In what condition was such portion of the pack as was not complete in cases at time of fire?

A. I do not know personally.

Q. What portion of supplies claimed in statement attached to so called proofs of loss was in Net House building at time of fire?

A. I do not know personally.

Q. In charging the value to cans, made up, have you not included the cost to you of tin in sheets, and if you have so charged full sheets, would not not include the two tons of chips from such tin for which an additional charge is made of eighty-eight dollars?

A. I did not personally make the investigation, but it is reported to me that the cans charged for were cans actually made and that the chips charged for are chips actually on hand which were purchased in Portland and shipped north in the Spring.

Q. What is the value of belting in stock statement?

A. I do not know personally.

Q. What is the value of hose, in stock statement?

A. I do not know personally.

Q. Is Net house located as per map made by your superintendent, Mr. Daly, after the fire, and as shown in photograph, designated, exhibit "A"?

A. I do not know personally—I never have seen the Cannery myself.

Q. Since receiving telegram from George A. Warren will you now answer directly, was the net house adjoining and communicating with the cannery building, or any addition attached to said cannery building?

A. Personally I do not know, never having seen the building.

Q. Was the platform on which net racks were located used as a wharf?

A. Personally I do not know.

Q. Is it not a fact that no wharf on the premises was destroyed by fire?

A. Personally I do not know.

Q. Was it your instruction to Broker Harrison, either orally or in writing to insure all the buildings, wharves, and all portions of the plant under one item?

A. Personally I do not know, I did not close the insurance.

Q. Did you at any time every talk with Broker Harrison about the wording of policies written on supplies and stock at Nushagak, prior to the fire?

A. I have had conversations with Mr. Harrison about the insurance because he has done my business for ten years, but I would not undertake to quote any conversation with him at any time.

Q. Did Broker Harrison at any time prior to the fire inform you that the policies written to cover stock and supplies covered in all of the buildings on your premises?

A. I do not know whether Mr. Harrison ever talked to me about this particular set of policies or not.

Q. Did you after the fire in Portland together with your two sons discuss the intended cover of building or buildings under the policies covering buildings and supplies, and did you and your sons

inform Adjuster Jolly that it was your understanding that the policies on buildings and supplies covered only on and in the cannery building and the buildings designated as the store, bunk house, office, beach man's house, or other buildings that did not adjoin or communicate with the cannery building proper, were not covered according to your understanding, by policies covering cannery building and supplies?

A. I have had several conversations with Mr. Jolly about the policies since the fire and I have no doubt asked a great many questions concerning his interpretation of its terms—at this moment I cannot repeat them all, but I do know that I finally concluded, after having heard Mr. Jolly express himself, that my only hope for reimbursement was from the actual reading of the documents themselves.

Q. Will you examine the map drafted in Portland, after the fire by your superintendent (Mr. Daly) and certify after such examination as to whether the map is a correct description of, and does properly locate the buildings and other properties constituting your plant at Nushagak?

A. While I would be willing to place credence and faith in Mr. Daly's maps and statements I do not know that the same are correct.

Q. After the examination of the map referred to designated exhibit "D", will you state whether or not the net house building is in any way a part of the cannery building, or is located on any wharf, or is in your opinion a part of the main cannery buildings, that would be covered under policy conditions, of

policies, covering either building or stock, in buildings known and designated as the cannery building?

A. I do not know what exhibit "D" is and as to what would be covered under the policy conditions, not being an expert it would only be a matter of opinion.

Q. Have you information or can you obtain the value of the stock and supplies in other buildings of the plant, not destroyed, a part of the cargo taken to Nushagak, during the year 1910?

A. I have been advised as to what the value of stock in other buildings was, but I do not know it personally.

Q. In your written instructions under date of February 25, 1910, M. C. Harrison & Co., wherein you instructed the placing "fire insurance to protect up cargo for two months after arrival and down cargo for three months before loading." What did you intend the word "cargo" to indicate?

A. I did not write the letter of February 25|10 to which you apparently refer.

FRANK M. WARREN.

Subscribed and sworn to before me this 7th day of October, 1910.

[Seal] ANNE F. HASTY,

Notary Public in and for the City and County of San Francisco, State of California.

Notary Public.

Filed Jan. 11, 1912.

A. M. CANNON,

Clerk U. S. District Court.

[Plaintiff's Exhibit 37.]

San Francisco, Cal., Oct. 14th, 1910.

Mr. Frank M. Warren, President,
Alaska Portland Packers' Ass'n.
Portland, Ore.

Dear Sir:

Re-claim for loss at Nushagak, Alaska.....

Document filed Sept. 30th, 1910, purporting to be Proofs of Loss, was defective, as evidenced by amended statement filed by you while in San Francisco, and your attention is called to other defects that should be corrected, as follows:

TOTAL INSURANCE.	Stated in so called proofs to be, "One Hundred, Fifty two Thousand, One Hundred Forty one and 9|100"
	Your order to Broker dated Feb. 26th, 1910, is for $80,000. "To protect up cargo for two months after landing" the cargo arrived May 26th, 1910, this cover should have been issued to expire July 26th, 1910 "cargo" at that time must have been supplies, and it is fair to presume that your order a part of same letter to cover down cargo "for three months before loading, would have been called upon by you to contribute

for any loss of supplies in excess of the total of $27,500 fire insurance policies in force, had a loss by fire occurred destroying all of the supplies before they had been sealed in tins and became a portion of the season's pack. It is therefore but just to the fire insurance companies that apportionment of loss on supplies includes such portion of insurance ordered t cover down cargo, as would l necessary to cover total value of supplies, at plant for use during the packing season.

As you ordered total insurance of $250,000, and covers were secured by your broker in excess of that amount, it is only fair that all of the insurance ordered and obtained by your broker should be stated in correct proofs of loss.

SUPPLIES.

In so called proofs, a sound value of $21659.09 is given, this was the statement prepared by your Secretary, for the Adjuster in Portland, and included 10 per cent for transportation, you

file an amended statement adding $7500.54 for freight and other expenses; will you have a statement prepared from the books and vouchers of your office setting forth;—supplies at Nushagak left over from season of 1909, supplies shipped for season of 1910, supplies used in pack of 1910, and remaining supplies in the various buildings as per inventory of Oct. 8th, 1910, to this will be added freight charges, as per schedule obtained from steamship Company delivering supplies at Nushagak.

Your attention is called to that part of affidavit of October 7th, 1910, in reply to question.

Q. "There is no allowance for salvage although there is attached to so called proofs, a statement of supplies saved, it is not stated whether such supplies were removed from the burning building, or were stored in other buildings or locations on the property."

A. Salvage shown is value of supplies necessary to complete packing of salmon and these were also burned and are claimed under policies covering on supplies."

Kindly advise if it is your intention to convey in the above answer the claim that lacquer, benzine, oil

and labels necessary to complete the packing of 28,-996 cases were in the Cannery Building at the time of the fire and were "also burned and are claimed under policies covering on supplies."

In statement above referred to, there are a number of questions asked, to which you reply, "I do not know personally." You no doubt appreciate that you were not being interrogated personally, but as the President and representative of the Alaska-Portland Packers' Association. Therefore the Association is in duty bound through its representatives to obtain the information asked for in the statement submitted to you, and you are requested to kindly ascertain the evidence from such of your assistants or employees who were at the fire to enable you as a representative of the association to reply specifically to the questions asked. If it is not possible for you to obtain such information it would be necessary for the Companies in interest to obtain the services of an expert accountant in Portland who can develop the information desired from the books and vouchers in the office of the Association, and by affidavits from your foreman and heads of department who were in Nushagak at time of fire.

APPORTIONMENT OF LOSS:

Enclosed herewith is a statement prepared for the Companies in interest, setting forth the loss apportioned to the several kinds of insurance issued and to be issued in so far as the evidence presented can be applied. It is very evident that the apportionment which is made a part of so called proofs of loss was

prepared for the purpose of protecting insurance to the detriment of the fire insurance policies. This is not satisfactory or just, and such apportionment must be corrected to bind all of the insurance issued or to be issued for which covers were or should have been provided by your broker on the explicit orders of the secretary of your association as referred to herein.

Yours very truly,

AGRICULTURAL INS. CO., OF WATERTOWN, N. Y.

GLOBE AND RUTGERS FIRE INS. CO., OF NEW YORK.

SVEA INS. Co., OF GOTENBURG, SWEDEN.

Edward Brown & Sons,
General Agents.

NATIONAL UNION FIRE INS. CO.,
Wm. A. Drennan,
Mgr.

ST. PAUL F. & M. INSURANCE CO.,
Christensen & Goodwin,
Managers.
By Chas. Christensen.

ADJUSTER'S STATEMENT.

Claim of the ALASKA-PORTLAND PACKERS' ASSOCIATION, Portland, Oregon.

LOSS AT NUSHAGAK, ALASKA.

Ascertainment of loss from statements presented in support of claim:

SUPPLIES.	Original Claim.	Freight.	Marine Ins. & Wharfage.
Machinery	$ 178.62	$ 1.00	$ 7.11
Metals	2,976.52	79.25	120.16
Contents of Net House	2,238.81	16.00	90.98
Cases, to be used in completing pack	3,506.25	1,299.80	142.54
Supplies in Cannery Bldg. as per statement (9|30|10) destroyed	12,758.89	5,229.97	513.73
Inventory after fire	$21,658.09		
Freight		$ 6,626.02	
Marine Ins. & Wharfage			$ 874.52
Total amended claim			$29,159.63
Less 10 per cent added to original claim for delivery	$ 1,969.09		
Inventory at invoice	$19,690.00		
Supplemental claim			$ 7,500.54
Less, Marine Ins. & Whfg.			874.52
	$ 6,626.02		$ 6,626.02
Inventory & Freight		$26,316.02	
Deduct Machinery	178.62		
Freight	1.00		
Cases to complete pack	3,506.25		
Freight,	1,299.80	4,985.67	
Supplies in inventory			$21,330.35
Deduct, Metals		2,976.52	
Freight		79.25	
		$ 3,055.77	
Less, Copper	$ 62.66		
Freight	.50	63.16	
Solder & Zinc		$ 2,992.61	
Deduct for value to recover (1-2)		1,496.31	1,496.30
Value of supplies and nets			$19,834.05

SALMON ACCOUNT.

19,694 cases on vessel	$88,623.00
3,712 cases on barges	16,704.00

23,406 cases at $4.50		$105,327.00
24,996 cases in cans	$112,482	
4,000 cases in cases	18,000	
		$130,482.00

Value of pack if completed at $4.50 per case $235,809.00

INSURANCE ACCOUNT.

Lloyds cover	$177,135.00
Marine cover (St. Paul)	45,165.00
Fire policies	27,500.00
Short to complete order	200.00
Insured ordered of Broker (Letter Feb. 25th, 1910)	$250,000.00
Lloyds authorized increase, 36750|48500 of $235,809.00	1,545.00
Insurance provided to care for season's pack	$251,545.00

E. J. JOLLY,

Adjuster.

San Francisco, Cal., Oct. 12th, 1910.

APPORTIONMENT.

SUPPLIES:—

Value ascertained (adjuster's Statement) $19,834.05

Fire Insurance issued protecting supplies $27,500.00

Order February 25th, 1910, ("Up Cargo) must have been supplies, cover ordered, $80,000.00 for 60 days after arrival, must have been succeeded by order for $250.000, "for three months before leading" which must have covered supplies as there was no salmon in pack at such date, hence, other insurance must protect supplies for.... 52,500.00

Issued and ordered (Feb. 25th, 1910) 80,000.00

To cover loss on supplies:—

Fire Insurance	11-32 part	$ 6,817.90
Other Insurance	21-32 part	$13,016.15
Supplies and contents of net house		$19,834.05

SALMON ACCOUNT:—

Salmon in cases, 4000 at 4.50 ..... 18,000.00

To cover loss on salmon cases,

Fire Insurance ..... $ 20,682.10 1,618.80

Lloyds Cover	$164,118.85	12,846.10
St. Paul Cover	45,165.00	3,535.10
	$229,965.95	$18,000.00

24996 cases, Salmon in tins $112,482.00

To cover loss of salmon in tins..... $112482.00

Fire insurance excludes lacquer, labels and cases,

Cases and freight.....	$4806.05	
Laq. Lab'ls, & oil.....	1365.31	
Freight	455.10	6626.46

Fire Ins. Contributes on proportion of $105,855.54

Fire Insurance	19,063.30	9,531.65
Lloyds cover	151,272.75	80,739.03
St. Paul cover	41,629.90	22,211.32
	$211,965.95	$112,482.00

As apportioned:—

	Lloyds Cover.	Fire Ins.	St. Paul Cover.
Supplies	13,016.15	6,817.90	
Salmon in cases	12,846.10	1,618.80	3,535.10
Salmon in cans	80,739.03	9,531.65	22,211.32
	$106,601.28	$17,968.35	$25,746.42

SUMMARY.

Supplies	$19,834.05	Lloyds cover	$106,601.28
Salmon in cases	$18,000.00	St. Paul Cover	$25,746.42
Salmon in tins	$112,482.00	Fire Insurance	$17,968.35
Totals	$150,316.05		$150,316.05

	Lloyds	$94,355.64
E. & O. E.	St. Paul	$25,631.95
Apportionment submitted to Companies—fire		$27,281.94
		$147,268.53

E. J. JOLLY,
Adjuster.

Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 38.]

San Francisco, October 8, 1910.

Globe & Rutgers Fire Ins. Co.,
San Francisco.

Dear Sirs:

LOSS AT NUSHAGAK, ALASKA, AUG. 10|10
UNDER YOUR POLICY NO. 550017:

I beg to hand you supplement or amendment to my Proof of Loss dated 30th day of September, having overlooked in arriving at my values on supplies burned, the various items mentioned in my amendment herewith.

Please add this statement to my Proof of Loss and consider it a part thereof.

Yours very truly,
FRANK M. WARREN.

FMW|EM

To The Globe & Rutgers Fire Ins. Co., under Policy No. 550017:

STATEMENT OF FRANK M. WARREN.

City and County of San Francisco,
State of California—ss.

Frank M. Warren, being first duly sworn, deposes and says: I am the President of the Alaska Portland Packers' Association, the assured under policies described below, and am duly authorized by resolution of the board of directors, already filed with each of the

said companies, to settle all claims under these policies.

I.

Exhibit "A" attached to Proof of Loss, filed with the National Union Fire Insurance Co., Policy No. 10202, the Globe & Rutgers Fire Insurance Co., Policy No. 550017; Agricultural Insurance Co., Policy No. 25144; St. Paul Fire & Marine Insurance Co., Policy No. 230898, and Svea Fire Insurance Co., Policy No. 96051, on the 30th day of September, 1910, in the first paragraph has been called to my attention as reading "buildings"—the letter "s" should be eliminated, as the slips attached to the policies themselves read "building."

II.

In making up my claim for loss I filed the same based upon the same price that I had insured the supplies against marine loss on the Ship "Berlin" at Portland, Oregon, and did not include the freight money nor cartage and wharfage, literage at Nushagak, handling to the cannery and marine insurance. I now claim an additional loss, being the equivalent of the above expenses on each article of supplies for which loss has been claimed, more particularly described as follows:—

556,704 Cans @ 28c per case	$3,247.44
45,122 Tops, 170 bxs. approximately 23½ tons @ $10	235.00
2 tons of Chips @ $10	20.00
36,566 Boxes, approximately 182.8 tons @ $10	1,828.00

9,000	Extra tops, approx. 2 tons @ $10	20.00
	Lubricating oil, approx. 1|5 tons	2.00
	Pipe fittings	.50
	Belting and Hose	.50
	Salt 15 tons @ $10	150.00
	Coal 100 tons @ $10	1,000.00
	Caustic Soda, approx. 1|6 ton	1.33
	Tin 6600 lbs: 3.3 tons @ $10	33.00
	Lead 7400 lbs. 3.7 tons @ $10	37.00
	Copper	.50
	Hanging Line	1.00
	Trap Web	.50
	Zinc 1750 lbs. @t $10	8.75
	Gill Nets	1.00
	Floats	10.00
	Lead Line 700 lbs.	3.50
	Nails, 20 kegs	10.00
	Coal Oil, 220 Gals.	11.00
	Two Drums	5.00
	Marine insurance on the value of the goods and value of freight	686.77
	Wharfage at Portland	187.75
		$7,500.54

I claim all of the above as being part of the value of the property destroyed covered under each of your several policies.

III.

The loss now properly claimed on supplies amounts to as follows:—

Amount of original Proofs $21,659.09
Additional claim on freight, cartage, wharfage, lighterage and cost of putting in the cannery, cost of marine insurance as above 7,500.54

$29,159.63

My loss on supplies being therefore more than the entire amount of insurance on the supplies under the several policies heretofore advised and exhibited, I claim from you a total loss under your policy.

FRANK M. WARREN.

Subscribed and sworn to before me this 8th day of October, 1910.

[Seal] ANNE F. HASTY,

Notary Public in and for the City and County of San Francisco, State of California.

Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 43.]

Received Dec. 8, 1910, 11:20 A. M.
Answered .....
App. Harvey O. Bryan. 11:20 A. M.

San Francisco, Cal., Dec. 6th, 1910.

Alaska-Portland Packers' Assn.
Portland, Ore.

Gentlemen:

LOSS AT NUSHAGAK, ALASKA.

Being advised by the St. Paul Fire & Marine In-

surance Company, that it was the intention of the management to withdraw from further investigation of the amount of liability under proof of loss as presented to companies in interest by your Corporation, I desire to request, on behalf of the remaining Companies in interest, in this adjustment, definite information on certain statements presented, to complete proofs satisfactory to Managers not inclined to take the same course as the St. Paul Fire & Marine Insurance Company, has pursued in this matter.

TOTAL INSURANCE: Set forth in proof of loss presented, is stated to be "One Hundred, Fifty two Thousand One Hundred Forty one and 9|100 Dollars.

EVIDENCE PRESENTED: Indicates Lloyds Cover, Underwriters in London L48500|250,000 of Salmon, as interest may appear, this providing $233,-770|250,000 on Salmon sealed in tins, there being 52,-402 cases @ $4.50 per case, being $235,809.00

---

at risk, Lloyds cover insures $220,500.27

---

of this $130,482 is the gross value of all salmon on the cannery premises at date of fire, being $122.011.10

There being total insurance required to cover pack valued at $235,809.00 the St. Paul Fire & Marine, conditional "open Insurance" is required in the sum of.....$ 24,991.47

---

to cover "Gross value Salmon on Cannery

premises, ... $147,002.57
and, to provide cover for Marine Risk for Salmon on "Berlin" and on Barges, required of the open covers as follows:—
Lloyds remaining cover, to apply to Marine ..... $ 98,489.17
St. Paul Fire & M. Ins. Co., to apply to Marine ..... $ 24,991.47

$270,483.21

The St. Paul cannot benefit by the added Lloyds cover, as it stipulates in cover the exhaustion of only 177,135|250,000 of the Lloyds at risk, while Lloyds admit cover of $233,770|250,000 of salmon at risk.

Hence the insurance in force is:—
Lloyds $220,500.27
St. Paul 45,165.00
Fire Insurance 27,500.00

$293,165.27

STOCK SAVED.

Original proof presents claim for supplies $21,659.09
from which should be deducted for sup-

plies necessary to complete pack.....	4,871.56
	$ 16,787.53
To which is added cases destroyed.....	3,506.25
Loss that should have been presented in proofs filed .....$	20,293.78

Of this amount Lloyds and St. Paul are entitled to no credit for supplies necessary to complete pack, as their forms cover at $4.50 per case, "At midnight of date of sealing of tins," the difference in cover in this particular is not set forth in so called "Proofs of Loss" submitted.

In reply to question total value of property Saved, "you admit a value of .....$ 4,871.56 yet do not deduct property saved from loss. You make no allowance for stock not used to complete pack, excluded in policy slip attached as follows:—

"It is understood and agreed that the value of a case of salmon is $4.50, and that 48 one pound tins shall be taken as a case, whether lacquered, labeled and or cased or not, but in case of loss before being lacquered, labeled and or cased, the cost of material for lacquering, labeling and or casing be deducted from said value in ascertaining amount of loss."

APPORTIONMENT.

You apportion to Fire Insurance Loss....$ 21,659.09
the total amount of your statement attached, yet you admit saved (as per credit memo attached) .....$ 4,871.56

therefore your loss in proof is .....$ 16,787.53

Above clause excluding supplies not used, is ignored in so called proofs as apportioned.

SALMON: You apportion a loss of .....$ 5,622.85 to Fire Companies without setting forth correct insurance in force in Lloyds and St. Paul F. & M. covers, hence apportionment cannot be correct.

You stated in deposition of Geo. A. Warren, attached to back of so called Proofs of Loss.

"The number of cases packed for the season amounted to 52,402 cases, and there had been loaded on ship, including several barges which had been laden the day before, but which had not yet been towed to the ship nor laden thereon."

If the barges had been laden the day before, what part of the pack of the day of the fire was on the wharf or in other locations, other than on barges and in the Cannery Building? This is necessary to es-

tablish sound value of "salmon on the Cannery premises" as insured.

Was there any salmon in barrels or containers, other than tins?

INVENTORY OF CANNERY SUPPLIES BURNED.

Under this caption you enumerate:—

Belting and Hose, Pipe and Fittings.....$ 228.81

These were insured under specific insurance on machinery and building supplies.

Tin, lead, copper and zinc to the value of.....$2,976.52

There is no evidence that these metals were together in the same location in Cannery Building or that they were melted, or that they were melted, or that they were not in pig form after the fire, it is as just to assume that they are not damaged in the least, as to surmise that they are a total loss, they have a material value even if they are all melted together, and are under the floor of the building destroyed.

The following extract from certificate of Frank M. Warren is significant; "except that there may be in the marsh some melted tin, lead, copper and or zinc, but the same cannot be used in our business."

What evidence have you of this if you did not look for the metals after the fire?

SUPPLEMENTAL CLAIM.

Dated Oct. 8th, 1910.

Increasing claim for value of supplies in the sum of $7,500.54

Is not admitted or allowed for several reasons:

First: The Adjuster agreed with claimant's representatives in Portland on a 10 per cent allowance for freight on supplies and claimants admitted that vessel in question on which freight allowance for building materials and machinery was figured in charter and other expense of delivering of materials at Nushagak, could and would take all supplies and at the same cost. Vessel could not be sent out until next Spring at any cost, hence the freight of 10 per cent on supplies is ample to cover cost when they can be shipped. If this is further disputed, evidence of freight allowance on similar cargo under charter freight rate for same destination at same date of shipment of cargo destroyed is in possession of Adjuster to substantiate the fallacy of claimant in this particular:—

10 per cent is all the allowance admitted for freight, on the "actual cash value of the property at the time any loss or damage occurs" when that cash value is established by compliance with policy conditions.

After you have replied to questions herein set forth, and have corrected so called proofs of loss to set forth evidence correctly, so that proofs of loss and evidence subsequently presented agree, so that Companies in interest may know the proper amount to be

apportioned and the corrected amount of insurance in force at time of fire to contribute thereon, it will then be determined what may be the disagreement as to the amount of loss, and on the ascertainment thereof, these companies will be prepared to submit such differences to appraisement as provided in policy conditions, reading as follows: "In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

Respectfully submitted,

SVEA FIRE INSURANCE COMPANY,
GLOBE & RUTGERS FIRE INSURANCE CO.,
AGRICULTURAL INSURANCE CO.,
NATIONAL UNION FIRE INSURANCE CO.,

By E. J. Jolly,
Adjuster.

Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 44.]

AGREEMENT FOR SUBMISSION TO APPRAISERS.

THIS AGREEMENT, made and entered into by and between Alaska-Portland Packers' Association of Portland, Oregon, of the FIRST part, and the Insurance Company or Companies, whose name or names are signed hereto, of the second part, each for itself and not jointly.

WITNESSETH, That J. P. Treanor of San Francisco, California, and E. J. Jolly, of San Francisco, Calif., shall appraise, ascertain and determine the sound value of and the loss upon the property damaged and (or) destroyed by the fire of 10th day of August, 1910, as specified below and on the back hereof. PROVIDED, That the said APPRAISERS shall FIRST select a competent and disinterested umpire who shall act with them in matters of difference ONLY. The award of any two of them, made in writing, in accordance with this agreement, shall be binding upon both parties to this agreement as to the amount of such loss.

It is expressly understood that this agreement and appraisement is for the purpose of ascertaining and fixing the amount of sound value and loss and to adjust other differences hereinafter described, and shall not determine, waive or invalidate any other right or rights of either party to this agreement.

The property on which the sound value and the loss (or) damage is to be determined is as set forth in

forms attached to this Agreement, together with other differences as set forth in form attached on back thereof.

ALASKA-PORTLAND PACKERS' ASSOCIATION.

Stock in Cannery.

$.....On tin, tin cans, manufactured and in process of manufacture and on materials for making and finishing same; on salmon pickled, frozen and or canned, packed and in process of packing; on nets, rope, web, ice, twine, thread, salt, sugar, paper, lead, corks and lines, barrels, packing boxes, and labels and on all other products, materials and supplies incident to the canning, packing, freezing and pickling of, salmon; All while contained in the frame building, additions, sheds adjoining and communicating, occupied as a salmon cannery, and situate at Nushagak, Bristol Bay, Alaska, and or on the wharves and platforms connected therewith.

Permission is hereby granted to run overtime and at night, or cease operation entirely as the interest of the assured may demand, and to make additional alterations and repairs without notice to this company.

Permission, granted to do lacquering in and on the premises, it being warranted by the assured that no more than one day's supply of lacquer, benzine, naphtha or other product of petroleum, except refined kerosene oil, shall be kept in or taken into the main

cannery building, or other buildings within fifty (50) feet thereof, at any one time; that artificial lights, except electric lights, shall not be used in the building where the lacquering is being done; and that smoking or the use of open lights on the premises shall not be allowed.

In the event of loss, the assured to furnish one adjuster for all companies concerned (should they elect to send one), transportation and subsistence, or cost of same, from Seattle to and at the assured's premises and return.

It is understood and agreed that the value of a case of salmon is $4.50, and that 48 one pound tins shall be taken as a case whether lacquered, labeled and or cased or not, but in case of loss before being lacquered, labeled and or cased, the cost of material for lacquering, labeling and or casing shall be deducted from said value in ascertaining amount of loss.

Warranted by the assured that no tarring or oiling of nets be allowed within the cannery building, nor nets kept in the cannery building after such tarring or oiling is done until after such nets have been used at least during one fishing season. All nets kept in cannery building to be hung on racks or suspended from the ceiling.

WATCHMAN CLAUSE—It is understood and agreed that during the packing season a watch shall be employed by the assured to be in and upon the premises every night and that when the packing season is over, one man shall be left on the premises, who shall have charge of same, and who shall reside in

or near the above described premises;

It is understood that the within described cannery is known as the Alaska Portland Packers' Association's Cannery.

OTHER CONCURRENT INSURANCE PERMITTED.

London, May 9th, 1910.

This is to certify that insurance has been opened with the undersigned underwriters and that policies will be put forward as interest may appear per "Berlin" on Salmon warranted free from particular average unless the vessel be stranded, sunk, burnt, on fire or in collision, etc., from Cannery on Bristol Bay to Pacific Coast, at 2½ per cent interest on deck held covered at double premium. Including fire risk from midnight of date of sealing of tins or barrels at 1|8 per cent per month, but not exceeding 90 days, Part of $250,000, warranted free from capture, seizure and detention and the consequence of any attempt thereat, piracy and parratry excepted and other consequences of hostilities.

Signature underwriters in London, £36750; later endorsed to read: Part of £48500; value $4.50 per case.

Insurance on risk in Cannery in London, under above cover.

San Francisco, May 15th, 1910.

It is understood and agreed that this cover attaches to salmon only as per face hereof, the amount of risk at the time of loss or otherwise to be determined in the following manner:

1st. Underwriters in London in the amount of £36,750—$117,135, cover 177,135|250,000ths of the gross value at $4.50 per case and $8.00 per barrel on all salmon on the cannery premises.

2nd. Underwriters in the amount of $27,500 as follows: Globe & Rutgers, $5,000; Svea, $7,000; Agricultural, $3,000; National Union, $7,500; St. Paul, $5,000, cover all supplies remaining ex "BERLIN", out of shipment in the amount of $76,009, season of 1910.

3rd. Such portions of policies of the Globe & Rutgers, $5,000; Svea, $7,000; Agricultural, $3,000; National Union, $7,500; St. Paul, $5,000, as are not required to cover supplies as per paragraph two, are to attach to salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel.

4th. After deducting the value of all salmon as would be covered by the intended interpretation of paragraphs one and three, from the gross value of all salmon on the cannery premises, the remainder of such value of salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel, shall be covered by this insurance, not exceeding the sum of $45,165.

It is further expressly understood and agreed that in determining the sound value and the loss or damage upon the property hereinbefore mentioned, the said appraisers are to make an estimate of the actual cash cost of replacing or repairing the same, or the actual cash value thereof, at and immediately preceding the time of the fire; and in case of depreciation of the property from use, age, condition, location or oth-

erwise, a proper deduction shall be made therefor.

IN WITNESS WHEREOF, We have hereunto set our hands, at Portland, Oregon and San Francisco, this 3rd day of January, 1911.

ALASKA-PORTLAND PACKERS' ASSOCIATION,

By .....

GLOBE & RUTGERS FIRE INSURANCE CO.,
AGRICULTURAL INSURANCE COMPANY,
SVEA FIRE INSURANCE COMPANY,
By Edward Brown & Sons,
General Agents.

NATIONAL UNION FIRE INSURANCE CO.,
By Wm. A. Drennan,
Manager.

DECLARATION OF APPRAISERS.

STATE OF CALIFORNIA,
City & County of San Francisco—ss.

We, the undersigned, do solemnly swear that we will act with strict impartiality in making an appraisement and estimate of the sound value and the loss and damage upon the property hereinbefore mentioned, and in the adjustment of all differences set forth, in accordance with the foregoing appointment, and that we will make a true, just and conscientious award of the same according to the best of our knowledge, skill and judgment. We are NOT related to the assured, either as creditors or otherwise, and are NOT interested in said property or the

insurance thereon.

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.....

.....

Appraisers.

Subscribed and sworn to before me, this..... day of January, A. D., 1911.

.....

SELECTION OF UMPIRE.

We, the undersigned, hereby select and appoint— ..... to act as umpire to settle matters of difference that exist between us by reason of and in compliance with the foregoing agreement and appointment.

Witness our hands this .....day of January, 1911.

.....

.....

QUALIFICATION OF UMPIRE.

STATE OF CALIFORNIA,

City & County of San Francisco—ss.

I, the undersigned, hereby accept the appointment of umpire, as provided in the foregoing agreement, and solemnly swear that I will act with strict impartiality in all matters of difference ONLY that shall be submitted to me in connection with this appointment, and I will make a true, just and conscientiou award, according to the best of my knowledge, skill and judgment. I am NOT related to any of the parties to this

agreement, nor interested as a creditor or otherwise in said property or insurance.

.....

Subscribed this ..... day of January, 1911.

.....

.....

AWARD.

TO THE PARTIES IN INTEREST:

We have carefully examined the forms attached hereto, in accordance with the foregoing appointment, and have considered the Proof of Loss as presented by claimant Corporation, dated September 30th, 1910, and find that the sound value of supplies destroyed is $.....

That the loss under fire insurance policies on supplies is $.....

That the loss on supplies not covered under fire insurance is $.....

That the sound value of salmon packed during season of 1910 is $.....

That the sound value of salmon destroyed in Cannery Bldg. is $.....

That the sound value of salmon on Barges and Vessel at date of fire in Cannery building was $.....

That the Fire Insurance Companies are liable for loss on Salmon in cases at date of fire, in the sum of $.....

That the fire Insurance Companies are liable for loss on salmon not labeled, lacquered or cased at date of fire in the sum of $.....

That the Lloyds Underwriters are liable for loss on Salmon sealed in tins or barrels whether labeled, lacquered or cased on premises, described in cover attached to proof of loss in the sum of $.....

That the St. Paul Fire & Marine Ins. Co. is liable for loss on Salmon sealed in tins or barrels, whether labeled, lacquered or cased on the cannery premises, described in copy of cover attached to proof of loss, in the sum of $.....

That the amount of insurance in force at date of fire as provided in cover of the Underwriters in London, designated "Form B" attached to proof of loss, covering on Salmon "from midnight of date of sealing of tins or barrels" destroyed on cannery premises is $.....

That the amount of insurance in force at date of fire, as provided in described cover of the Underwriters in London covering on barges and vessel, (Marine Risk) is $.....

That the amount of insurance in force at date of fire as provided in cover of the St. Paul Fire & Marine Ins. Co. form attached to proof of loss, covering on Salmon "From date of sealing of tins or barrels" on the cannery premises (Fire risk insured is) $.....

That the amount of insurance in force at date of fire, as provided in described cover of the St. Paul F. & M. I. Co. covering on

barges and vessel, (Marine Risk) is $.....
That the amount of insurance in force at date of fire in Fire Insurance Companies is $.....
That the amount of insurance not issued as ordered from Broker to cover fire and marine risk of claimant corporation for the season of 1910, is $.....
That the "Inventory of Cannery supplies burned" attached to proof of loss, contains items insured under specific insurance on building amounting to $.....
That the above described inventory contains items specifically insured as Machinery amounting to $.....
That the above described inventory contains items not covered under the form of the Fire Insurance Companies in the sum of $.....
That the loss on metals in the above described inventory designated as tin, lead, copper, zinc and solder is $.....
That items described in the above mentioned inventory not in building and not covered by insurance, amount to the sum of $.....
That the statement attached to proof of loss, described as "Salvage from Salmon" should be credited to claim presented and apportioned to the Fire Insurance Companies in the sum of $.....
That the amout of loss under the fire in-

surance policies is $.....
That the amount of loss under the Underwriters of London form is $.....
That the amount of loss under the St. Paul F. & M. I. Co. form is $.....
That the freight allowance on supplies delivered is $.....
That the number of cases of Salmon completed at date of fire is $.....
That the number of cases of Salmon unlacquered at time of fire is $.....
That the number of cases of Salmon unlabeled at time of fire is $.....
That the number of cases of Salmon uncased at time of fire is $.....
That the number of cases of Salmon on Barges and Vessel at time of fire was $.....

.....

Appraisers.

.....

.....

Umpire.

San Francisco, California, January ....., 1911.

Witness our hand this ..... day of January(1911.

.....

.....

.....

Appraisers.

[Endorsed on Back]: Loss No. .....Agreement for Submission to Appraisers of loss by

fire between Alaska-Portland Packers' Association and the various Insurance Companies, Policy No. ..... E. J. Jolly, General Adjuster, San Francisco, Cal.

Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 45.]

CAREY & KERR
Law Offices
410 Chamber of Commerce.

Charles H. Carey
James B. Kerr

Harrison Allen
Omar C. Spencer
Charles E. McCulloch

Portland, Oregon
January 6, 1911.

Received Jan. 9, 1911.
Answered .....

Edward Brown & Sons.
Globe and Rutgers Fire Insurance Company,
Agricultural Insurance Company,
Svea Fire Insurance Company,
Edward Brown and Sons, Agents,
San Francisco, California.

Gentlemen:

The draft of a proposed agreement for submission to appraisers prepared and signed by you, has been

received by Alaska-Portland Packers' Association. The insured has turned over the policies to us for suit and we are now preparing the complaint and expect to file it within a few days.

The Alaska-Portland Packers' Association does not recognize your right at this time to demand submission to appraisers. It would not, in any event, be willing to submit all of the matters you have included in this paper to appraisers or arbitrators. Moreover, it would never go into any arbitration with Mr. E. J. Jolly as an appraiser or arbitrator representing the insurance companies, as it feels that Mr. Jolly's position is not that of a competent and disinterested umpire.

Yours respectfully,

CAREY & KERR.

CHC-H

Filed Jan. 11, 1912.

A. M. CANNON,

Clerk U. S. District Court.

[Plaintiff's Exhibit 64.]

By this Policy of Insurance

No. 502104 $2500.00

THE SVEA INSURANCE COMPANY

of Gothenburg, Sweden

IN CONSIDERATION OF THE STIPULATIONS HEREIN NAMED and of Twenty Five & No|100 Dollars Premium does insure St. Paul Fire & Marine Insurance Company for the term of ..... from the 26th day of May, 1906 at noon, to the 26th day of August, 1906, at noon, against all direct loss or damage by FIRE, except as hereinafter provided, to

an amount not exceeding Twenty Five Hundred Dollars, to the following described property while located and contained as described herein, and not elsewhere, to wit:

On their interest as insurers under their Marine Department agency policy number 32179-32180 or open cover No. 602 issued to Alaska Portland Packers' Association covering $50,000, viz:—

$.....0..... On frame buildings, sheds, net racks, wharves, piling and capping, comprising the cannery plant of the Alaska Portland Packers' Assn., and known as the ....Cannery, situate at Bristol Bay, Alaska.

$.....0..... On engines and boilers, smoke-stacks and steam connections, and on all other fixed and movable machinery, shafting, gearing, belting pulleys, hangers and on parts and extras of and for same, and on all tools, implements, appurtenances, retorts, machines and fixtures, belonging or relating to the business of salmon packing or canning.

$50,000 On tin, tin cans manufactured and in process of manufacture, and on materials for making and finishing same; on salmon packed and in process of packing; on nets, rope, web, twine, thread, lead, corks and lines, barrels, packing boxes, labels, provisions, fuel, and on all other product, material stores, merchandise and supplies incident to the canning and packing of salmon, their

own or held by them in trust or on commission, or sold but not removed, in which they may retain an interest; it being hereby understood and agreed that this insurance does not attach to nor cover on any building, shed, wharf, boat, fixtures or machinery, nor on appurtenances or supplies therefor.

$.....0.....In their fishing boats and dories and their equipments, consisting of masts, sails, oars and tackle.

All while contained in or attached to the buildings, sheds, warehouses and fish house, and on platforms, wharf and tramways above described.

In event of loss, all cans filled and ready for lacquering, labeling or casing, are to be estimated at the market value of cased goods less the actual cost of labor and material to complete the same.

Permission granted to repair boats; to keep and use kerosene oil for lights; to work nights and to shut down. Warranted by the assured that benzine, naphtha, or other product of petroleum, shall not be kept on the premises, either for the reduction of lacquer or for any other purpose except as herein permitted.

Permission granted to keep and use lacquer on the premises insured; to keep for sale on the premises not to exceed 150 pounds of gunpowder (in metal canisters) and 500 gallons kerosene oil, and to use firepots fed by kerosene oil warranted to stand a fire test of 110 degrees Fahrenheit, or better, before it will

flash or emit inflammable vapor, provided the pipes leading to said fire-pots are supplied from and the oil is kept at the point not less than twenty-five feet from all the buildings referred to in this policy.

In case of loss, the assured to furnish to one adjuster for all companies concerned (if they elect to send one) transportation and subsistance, or cost of same, from San Francisco to and at the insured premises and return.

It is understood and agreed that this insurance covers on each of above described buildings, when detached from any other building, in that proporitin which the value of each building bears to the total value of all the buildings, and covers also on the contents of said buildings in the same manner.

It is understood that the above described property stands on U. S. Government land.

Permission is hereby granted for other concurrent insurance.

Permission is granted to use electric lights. Wires to be coated with approved insulating material, and to have at least double the conducting capacity required by the generators, and to be protected by porcelain or hard rubber insulators where they enter the building. Lamp frames to be insulated and to have globes closed at the bottom, and at the top by spark arrestors where ignitable materials are exposed.

Permission is hereby granted to use a gasoline engine, it being warranted by the assured that the tank for gasoline and naphtha be constructed of iron, capacity not to exceed 100 gallons, to be buried not less

than four feet under ground and not within 30 feet of any insurable building, and that the engine shall not be used below the grade or first floor of the building; the gasoline or naphtha to be forced directly from the tank to the engine by automatic pump; ignition to be by electric spark; supply pipe to drain toward tank and to enter building at nearest point to engine; the engine room to be well ventilated at floor and ceiling.

Permission is hereby granted to reduce lacquer with benzine, it being warranted by the assured that the lacquering machine is placed outside of the building on an open platform, and that no more than one and one-half gallons of benzine are to be used at one time in the reduction of lacquer, and that no lacquer or benzine shall be kept on the premises other than that used in the lacquering machine.

It is understood and agreed that during the packing season a watchman shall be employed by the assured to be in and upon the premises every night; and that when the packing season is over one or more white men shall be left on the premises who shall have charge of the same and who shall reside in or near the above described premises.

Privileged to make alterations and repairs (external conditions excepted) incidental to the business, for a term not exceeding fifteen days at any one time.

This insurance does not cover any immediate loss or damage to dynamos, exciters, lamps, switches, motors or other electrical machinery caused directly by electric current therein, whether artifical or natural.

July 14th, 1906.

It is understood and agreed that this policy re-insures the St. Paul Fire and Marine Insurance Company, on their interest as insurers, under their marine department Policy No. 32179-32180 and or open cover No. 602 and not as originally written.

This slip is attached to and made a part of Policy No. 502104 issued to ..... by the Svea Ins. Co.

Dated, Oakland, Cal., June 23, 1906.

Christensen, Edwards & Goodwin
Managers
20th Street and Telegraph Avenue
Oakland, Cal.

EDWARD BROWN & SONS,
F. M.

Other re-insurance permitted.

Subject to the same risks, valuations, conditions, adjustments, modes of settlement, endorsements and assignments, charges of interest or of rate as are or may be assumed or adopted by the re-insured, and loss, if any thereunder, is payable pro rata with the re-insured, and at the same time and place.

Attached to and forms part of Policy No. 502104 issued to ..... by Svea Ins Co.

Christensen, Edwards & Goodwin
Pacific Coast Managers
N. W. Cor. 20th St. & Telegraph Ave.
Oakland, Cal.

Signed EDWARD BROWN & SONS,
F. M.

June 23, 1906.

This policy is made and accepted subject to the following stipulations and conditions, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement indorsed hereon or added hereto, and as to such provisions and conditions no officer, agent. or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

IN WITNESS WHEREOF, Edward Brown & Sons, of San Francisco, in the State of California, under the authority of Power of Attorney from the Svea Insurance Co., of Gothenburg, Sweden, have, for and in behalf of the said Company, hereunto affixed their name at San Franicsco aforesaid, this 22nd day of June, 1906.

Not valid unless countersigned by the duly authorized Agent at San Francisco, Cal.

E. L. Favor, Special Agent at San Francisco, Cal.

EDWARD BROWN & SONS,

General Agents.

This company shall not be liable beyond the actual cash value of the property at the time any loss or

damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than 10 o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering, or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein;

or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above-described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard, (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specially assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furnitue or fixtures, sculpture, tools, or property held on storage or for repair; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or, by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy, it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance, no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become

void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the pro rata premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon, all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of the fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary

public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss, the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertain-

ment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of

the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

[Endorsed on Back]: Standard Fire Insurance Policy of the State of New York; Expires August 26th, 1906; Property, Bristol, Alaska; Am't, $2500.00; Premium, $25.00; St. Paul Fire & Marine Ins. Co., No. 502104, Svea Insurance Company of Gothenburg, Sweden. Pacific Coast Department, Edward Brown & Sons, General Agents, 1008 Broadway, Oakland, Cal.

Received Jun. 29, 1906.

Answered .....

Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 65.]

No. 54971. $1500.00.

A Stock Corporation.

THE AGRICULTURAL INSURANCE COMPANY, OF WATERTOWN, N. Y.

IN CONSIDERATION OF THE STIPULATIONS HEREIN NAMED AND OF FIFTEEN & NO|100 Dollars Premium. Does insure Saint Paul Fire & Marine Insurance Company, for the term of

.....Year.... from the 26th day of May, 1906, at noon, to the 26th day of August, 1906, at noon, against all loss or damage by FIRE, except as hereinafter provided, to an amount not exceeding Fifteen Hundred Dollars to the following described property while located and contained as described herein, and not elsewhere, to wit:

On their interest as insurers under their Marine Department agency policy number 32179-32180 or open cover No. 602, issued to Alaska Portland Packers' Association covering $50,000 viz:—

$.....0.....On frame buildings, sheds, net racks, wharves, piling and capping, comprising the cannery plant of the Alaska Portland Packers' Assn., and known as the .... Cannery, situate at Bristol Bay, Alaska.

$.....0.....On engines and boilers, smoke-stacks and steam connections, and on all other fixed and movable machinery, shafting, gearing, belting, pulleys, hangers and on parts and extras of and for same, and on all tools, implements, appurtenances, retorts, machines and fixtures, belonging or relating to the business of salmon packing or canning.

$50000 On tin, tin cans manufactured and in process of manufacture, and on materials for making and finishing the same; on salmon packed and in process of packing; on nets, rope, web, twine, thread, lead, corks and lines, barrels, packing boxes, labels, provis-

ions, fuel, and on all other product, material stores, merchandise and supplies incident to the canning and packing of salmon, their own or held by them in trust or on commission, or sold but not removed, in which they may retain an interest; it being hereby understood and agreed that this insurance does not attach to nor cover on any building, shed, wharf, boat, fixtures or machinery, nor on appurtenances or supplies therefor.

$.....0.....On their fishing boats and dories and their equipments, consisting of masts, sails, oars and tackle.

All while contained in or attached to the buildings, sheds, warehouses and fish house, and on platforms, wharf and tramways above described.

In event of loss, all cans filled and ready for lacquering, labeling or casing, are to be estimated at the market value of cased goods less the actual cost of labor and material to complete the same.

Permission granted to repair boats; to keep and use kerosene oil for lights; to work nights and to shut down. Warranted by the assured that benzine, naphtha, or other product of petroleum, shall not be kept on the premises, either for the reduction of lacquer or for any other purpose except as herein permitted.

Permission granted to keep and use lacquer on the premises insured; to keep for sale on the premises not to exceed 150 pounds of gunpowder (in metal canis-

ters) and 500 gallons kerosene oil, and to use fire-pots fed by kerosene oil warranted to stand a fire test of 110 degrees Fahrenheit, or better, before it will flash or emit inflammable vapor, provided the pipes leading to said fire-pots are supplied from and the oil is kept at the point not less than twenty-five feet from all the buildings referred to in this policy.

In case of loss, the assured to furnish to one adjuster for all companies concerned (if they elect to send one) transportation and subsistance, or cost of same, from San Francisco to and at the insured premises and return.

It is understood and agreed that this insurance covers on each of above described buildings, when detached from any other building, in that proportion which the value of each building bears to the total value of all the buildings, and covers also on the contents of said buildings in the same manner.

It is understood that the above described property stands on U. S. Government land.

Permission is hereby granted for other concurrent insurance.

Permission is granted to use electric lights. Wires to be coated with approved insulating material, and to have at least double the conducting capacity required by the generators, and to be protected by porcelain or hard rubber insulators where they enter the building. Lamp frames to be insulated and to have globes closed at the bottom, and at the top by spark arrestors where ignitable materials are exposed.

Permission is hereby granted to use a gasoline en-

gine, it being warranted by the assured that the tank for gasoline and naphtha be constructed of iron, capacity not to exceed 100 gallons, to be buried not less than four feet under ground and not within 30 feet of any insurable building, and that the engine shall not be used below the grade or first floor of the building; the gasoline or naphtha to be forced directly from the tank to the engine by automatic pump; ignition to be by electric spark; supply pipe to drain toward tank and to enter building at nearest point to engine; the engine room to be well ventilated at floor and ceiling.

Permission is hereby granted to reduce lacquer with benzine, it being warranted by the assured that the lacquering machine is placed outside of the building on an open platform, and that no more than one and one-half gallons of benzine are to be used at one time in the reduction of lacquer, and that no lacquer or benzine shall be kept on the premises other than that used in the lacquering machine.

It is understood and agreed that during the packing season a watchman shall be employed by the assured to be in and upon the premises every night; and that when the packing season is over one or more white men shall be left on the premises who shall have charge of the same and who shall reside in or near the above described premises.

Privileged to make alterations and repairs (external conditions excepted) incidental to the business, for a term not exceeding fifteen days at any one time.

This insurance does not cover any immediate loss or damage to dynamos, exciters, lamps, switches,

ters) and 500 gallons kerosene oil, and to use fire-pots fed by kerosene oil warranted to stand a fire test of 110 degrees Fahrenheit, or better, before it will flash or emit inflammable vapor, provided the pipes leading to said fire-pots are supplied from and the oil is kept at the point not less than twenty-five feet from all the buildings referred to in this policy.

In case of loss, the assured to furnish to one adjuster for all companies concerned (if they elect to send one) transportation and subsistance, or cost of same, from San Francisco to and at the insured premises and return.

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Permission is hereby granted to use a gasoline en-

gine, it being warranted by the assured that the tank for gasoline and naphtha be constructed of iron, capacity not to exceed 100 gallons, to be buried not less than four feet under ground and not within 30 feet of any insurable building, and that the engine shall not be used below the grade or first floor of the building; the gasoline or naphtha to be forced directly from the tank to the engine by automatic pump; ignition to be by electric spark; supply pipe to drain toward tank and to enter building at nearest point to engine; the engine room to be well ventilated at floor and ceiling.

Permission is hereby granted to reduce lacquer with benzine, it being warranted by the assured that the lacquering machine is placed outside of the building on an open platform, and that no more than one and one-half gallons of benzine are to be used at one time in the reduction of lacquer, and that no lacquer or benzine shall be kept on the premises other than that used in the lacquering machine.

It is understood and agreed that during the packing season a watchman shall be employed by the assured to be in and upon the premises every night; and that when the packing season is over one or more white men shall be left on the premises who shall have charge of the same and who shall reside in or near the above described premises.

Privileged to make alterations and repairs (external conditions excepted) incidental to the business, for a term not exceeding fifteen days at any one time.

This insurance does not cover any immediate loss or damage to dynamos, exciters, lamps, switches,

motors or other electrical machinery caused directly by electric current therein, whether artificial or natral.

July 14th, 1906.

It is understood and agreed that this policy re-insures the St. Paul Fire and Marine Insurance Company, on their interest as insureres, under their marine department, Policy No. 32179-32180 and or open cover No. 602, and not as originally written.

EDWARD BROWN & SONS,
F. L. B.

This slip is attached to and made a part of Policy No. 54971, issued to ..... by the Agricultural Ins. Co.

Dated, Oakland, Cal., Jun. 23, 1906.

Christensen, Edwards & Goodwin
Managers
20th Street and Telegraph Avenue
Oakland, Cal.
EDWARD BROWN & SONS,
F. M.

Other re-insurance permitted.

Subject to the same risks, valuations, conditions, adjustments, modes of settlement, endorsements and assignments, changes of interest or of rate as are or may be assumed or adopted by the re-insured, and loss, if any thereunder, is payable pro rata with the re-insured, and at the same time and place.

Attached to and forms part of Policy No. 54971, is-

sued to ..... by Agricultural ins. Co.

Christensen, Edwards & Goodwin
Pacific Coast Managers
N. W. Cor. 20th St. & Telegraph Ave.
Oakland, Cal.

Signed EDWARD BROWN & SONS,
F. M.

This policy is made and accepted subject to the foregoing stipulations and conditions and the stipulations and conditions stated in detail on the reverse side of this contract, which form a part hereof as fully as if recited herein, together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto, and no officer, agent or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement indorsed hereon or added hereto, and as to such provisions and conditions no officer, agent or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

IN WITNESS WHEREOF, this company has executed and attested these presents this 22nd day of June, 1906.

This Policy shall not be valid until countersigned by the duly authorized Manager or Agent of the Company at San Francisco, Cal.

WM. H. STEVENS,
President.

J. Q. Adams,
Secretary.

STIPULATIONS AND CONDITIONS.

Countersigned by Edward Brown & Sons, Agent.
By E. L. Favor, Special Agent.

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said accertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property

lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; on in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering, or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee-simple; or if the subject of insurance be personal property and be or become incumbered by a

chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard, (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power,

or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be cancelled at any time at the request of the insured; or by the company by giving five days' notice of such cancelation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the pro rata premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached. or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property

remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating, the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, possession, or exposures of said property

since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately

sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment

of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

[Endorsed on Back]: Standard Fire Insurance Policy of the State of New York. Expires August 26th, 1906; Property, Bristol Bay, Alaska; Am't, $1500.00; Premium, $15.00; St. Paul Fire & Marine Ins. Co. No. 54971. The Agricultural Insurance Company of Watertown, N. Y., Chartered 1853. It is important that the written portions of all policies covering the same property read exactly alike. If they do not they should be made uniform at once.

Received Jun. 29, 1906.
Answered .....
Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 66.]

No. 341081 $1000.00

THE GLOBE AND RUTGERS FIRE INSURANCE COMPANY.

Incorporated.
of the City of New York.
Cash Capital $400,000.00

IN CONSIDERATION OF THE STIPULATIONS HEREIN NAMED AND OF Ten & No|100 Dollars Premium Does insure Saint Paul Fire & Marine Insurance Company for the term of Three Months from the 26th day of May, 1906, at noon, to the 26th day of August, 1906, at noon, against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding One Thousand Dollars, to the following described property while located and contained as described herein, and not elsewhere, to wit:

On their interest as insurers under their Marine Department, agency policy number 32179-32180 or open cover No. 602, issued to Alaska Portland Packers' Association, covering $50,000, viz:—

$.....0.....On frame buildings, sheds, net racks, wharves, piling and capping, comprising the cannery plant of the Alaska Portland

Packers' Assn., and known as the .... Cannery, situate at Bristol Bay, Alaska.

$.....0.....On engines and boilers, smoke-stacks and steam connections, and on all other fixed and movable machinery, shafting, gearing, belting, pulleys, hangers and on parts and extras of and for same, and on all tools, implements, appurtenances, retorts, machines and fixtures, belonging or relating to the business of salmon packing or canning.

$50000 On tin, tin cans manufactured and in process of manufacture, and on materials for making and finishing the same; on salmon packed and in process of packing; on nets, rope, web, twine, thread, lead, corks and lines, barrels, packing boxes, labels, provisions, fuel, and on all other product, material stores, merchandise and supplies incident to the canning and packing of salmon, their own or held by them in trust or on commission, or sold but not removed, in which they may retain an interest; it being hereby understood and agreed that this insurance does not attach to nor cover on any building, shed, wharf, boat, fixtures or machinery, nor on appurtenances or supplies therefor.

$.....0.....On their fishing boats and dories and their

equipments, consisting of masts, sails, oars and tackle.

All while contained in or attached to the buildings, sheds, warehouses and fish house, and on platforms, wharf and tramways above described.

In event of loss, all cans filled and ready for lacquering, labeling or casing, are to be estimated at the market value of cased goods less the actual cost of labor and material to complete the same.

Permission granted to repair boats; to keep and use kerosene oil for lights; to work nights and to shut down. Warranted by the assured that benzine, naphtha, or other product of petroleum, shall not be kept on the premises, either for the reduction of lacquer or for any other purpose except as herein permitted.

Permission granted to keep and use lacquer on the premises insured; to keep for sale on the premises not to exceed 150 pounds of gunpowder (in metal canisters) and 500 gallons kerosene oil, and to use fire-pots fed by kerosene oil warranted to stand a fire test of 110 degrees Fahrenheit, or better, before it will flash or emit inflammable vapor, provided the pipes leading to said fire-pots are supplied from and the oil is kept at the point not less than twenty-five feet from all the buildings referred to in this policy.

In case of loss, the assured to furnish to one adjuster for all companies concerned (if they elect to send one) transportation and subsistence, or cost of same, from San Francisco to and at the insured premises and return.

It is understood and agreed that this insurance covers on each of above described buildings, when detached from any other building, in that proportion which the value of each building bears to the total value of all the buildings, and covers also on the contents of said buildings in the same manner.

It is understood that the above described property stands on U. S. Government land.

Permission is hereby granted for other concurrent insurance.

Permission is granted to use electric lights. Wires to be coated with approved insulating material, and to have at least double the conducting capacity required by the generators, and to be protected by porcelain or hard rubber insulators where they enter the building. Lamp frames to be insulated and to have globes closed at the bottom, and at the top by spark arrestors where ignitable materials are exposed.

Permission is hereby granted to use a gasoline engine, it being warranted by the assured that the tank for gasoline and naphtha be constructed of iron, capacity not to exceed 100 gallons, to be buried not less than four feet under ground and not within 30 feet of any insurable building, and that the engine shall not be used below the grade or first floor of the building; the gasoline or naphtha to be forced directly from the tank to the engine by automatic pump; ignition to be by electric spark; supply pipe to drain toward tank and to enter building at nearest point to engine; the engine room to be well ventilated at floor and ceiling.

Permission is hereby granted to reduce lacquer

with benzine, it being warranted by the assured that the lacquering machine is placed outside of the building on an open platform, and that no more than one and one-half gallons of benzine are to be used at one time in the reduction of lacquer, and that no lacquer or benzine shall be kept on the premises other than that used in the lacquering machine.

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Privileged to make alterations and repairs (external conditions excepted) incidental to the business, for a term not exceeding fifteen days at any one time.

This insurance does not cover any immediate loss or damage to dynamos, exciters, lamps, switches, motors or other electrical machinery caused directly by electric current therein, whether artificial or natural.

July 14th, 1906.

It is understood and agreed that this policy re-insures the St. Paul Fire and Marine Insurance Company, on their interest as insurers, under their marine department, Policy No. 32179-32180 and or open cover No. 602, and not as originally written.

EDWARD BROWN & SONS,

F. L. B.

This slip is attached to and made a part of Policy

No. 341081, issued to .....
by the Globe & Rutgers Ins. Co.

Dated, Oakland, Cal., Jun. 23, 1906.

Christensen, Edwards & Goodwin
Managers
20th Street and Telegraph Avenue
Oakland, Cal.

EDWARD BROWN & SONS,
F. M.

Other re-insurance permitted.

Subject to the same risks, valuations, conditions, adjustments, modes of settlement, endorsements and assignments, changes of interest or of rate as are or may be assumed or adopted by the re-insured, and loss, if any thereunder, is payable pro rata with the re-insured, and at the same time and place.

Attached to and forms part of Policy No. 341081, issued to ..... by Globe & Rutgers Ins. Co.

Christensen, Edwards & Goodwin
Pacific Coast Managers
N. W. Cor. 20th St. & Telegraph Ave.
Oakland, Cal.

Signed EDWARD BROWN & SONS,
F. M.

June 23, 1906.

This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such total cash value, with proper deduction for depreciation how-

ever caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy, shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or

procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or, if it cease to be operated for more than ten consecutive days; or, if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering, or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee-simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above described premises, benzine, benzole, dynamite, ether, fireworks, gas

oline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard, (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authoity; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire, or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidence of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manu-

scripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise: nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This pjolicy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it

shall retain only the pro rata premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of the property remaining in the original location, shall for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete

inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise. nor related to the insured) living nearest the place of the fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this

company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if the originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss, the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy

for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for reinsurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representatives of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts

of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement endorsed hereon or added hereto, and as to such provisions and conditions no officer, agent or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

IN WITNESS WHEREOF, this company has executed and attested these presents this 23rd day of June, 1906.

This policy shall not be valid until countersigned by the duly authorized Agent at San Francisco, Cal.

E. C. JAMESON,
President.

Lyman Candee,
Secretary.

Countersigned Edward Brown & Sons,
Agent.
By E. L. Favor, Special Agent.

[Endorsed on Back]: Standard Fire Insurance Policy of the State of New York, Pennsylvania, New Jersey and Connecticut. Expires, August 26th, 1906; Property, Bristol Bay, Ala.; Am't, $1000.00 Premium, $10.00; St. Paul Fire & Marine Ins. Co.; No. 341081; Globe & Rutgers Fire Insurance Company, of the City of New York, 76-78 William Street, New York. It is important that the written portions of all policies covering the same property read exactly alike. If they do not they should be made uniform at once.

Received Jun. 29, 1906.

Answered .....

Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 67.]

By This Policy of Insurance.

No. 502103. $2000.00

THE SVEA INSURANCE COMPANY,
of Gothenburg, Sweden.

IN CONSIDERATION OF THE STIPULATIONS HEREIN NAMED AND OF Twenty & No|100 Dollars Premium Does insure Saint Paul Fire & Marine Insurance Company for the term of ....from the 26th day of May, 1906, at noon, to the 26th day of August, 1906, at noon, against all direct loss or damage by FIRE, except as hereinafter provided, to an amount not exceeding Two Thousand Dollars, to the following described proper-

ty while located and contained as described herein, and not elsewhere, to wit:

On their interest as insurers under their Marine Department, agency policy number 32154 or open cover 607, issued to Columbia River Packers' Association covering $50,000 viz:—

$.....0.....On frame buildings, sheds, net racks, wharves, piling and capping, comprising the cannery plant of the Columbia River Packers' Assn., and known as the .... Cannery, situate at Bristol Bay, Alaska.

$.....0.....On engines and boilers, smoke-stacks and steam connections, and on all other fixed and movable machinery, shafting, gearing, belting, pulleys, hangers and on parts and extras of and for same, and on all tools, implements, appurtenances, retorts, machines and fixtures, belonging or relating to the business of salmon packing or canning.

$50000 On tin, tin cans manufactured and in process of manufacture, and on materials for making and finishing the same; on salmon packed and in process of packing; on nets, rope, web, twine, thread, lead, corks and lines, barrels, packing boxes, labels, provisions, fuel, and on all other product, material stores, merchandise and supplies incident to the canning and packing of salmon, their own or held by them in trust or on com-

mission, or sold but not removed, in which they may retain an interest; it being hereby understood and agreed that this insurance does not attach to nor cover on any building, shed, wharf, boat, fixtures or machinery, nor on appurtenances or supplies therefor.

$.....0.....On their fishing boats and dories and their equipments, consisting of masts, sails, oars and tackle.

All while contained in or attached to the buildings, sheds, warehouses and fish house, and on platforms, wharf and tramways above described.

In event of loss, all cans filled and ready for lacquering, labeling or casing, are to be estimated at the market value of cased goods less the actual cost of labor and material to complete the same.

Permission granted to repair boats; to keep and use kerosene oil for lights; to work nights and to shut down. Warranted by the assured that benzine, naphtha, or other product of petroleum, shall not be kept on the premises, either for the reduction of lacquer or for any other purpose except as herein permitted.

Permission granted to keep and use lacquer on the premises insured; to keep for sale on the premises not to exceed 150 pounds of gunpowder (in metal canisters) and 500 gallons kerosene oil, and to use firepots fed by kerosene oil warranted to stand a fire test of 110 degrees Fahrenheit, or better, before it will

flash or emit inflammable vapor, provided the pipes leading to said fire-pots are supplied from and the oil is kept at the point not less than twenty-five feet from all the buildings referred to in this policy.

In case of loss, the assured to furnish to one adjuster for all companies concerned (if they elect to send one) transportation and subsistance, or cost of same, from San Francisco to and at the insured premises and return.

It is understood and agreed that this insurance covers on each of above described buildings, when detached from any other building, in that proportion which the value of each building bears to the total value of all the buildings, and covers also on the contents of said buildings in the same manner.

It is understood that the above described property stands on U. S. Government land.

Permission is hereby granted for other concurrent insurance.

Permission is granted to use electric lights. Wires to be coated with approved insulating material, and to have at least double the conducting capacity required by the generators, and to be protected by porcelain or hard rubber insulators where they enter the building. Lamp frames to be insulated and to have globes closed at the bottom, and at the top by spark arrestors where ignitable materials are exposed.

Permission is hereby granted to use a gasoline engine, it being warranted by the assured that the tank for gasoline and naphtha be constructed of iron, capacity not to exceed 100 gallons, to be buried not less

than four feet under ground and not within 30 feet of any insurable building, and that the engine shall not be used below the grade or first floor of the building; the gasoline or naphtha to be forced directly from the tank to the engine by automatic pump; ignition to be by electric spark; supply pipe to drain toward tank and to enter building at nearest point to engine; the engine room to be well ventilated at floor and ceiling.

Permission is hereby granted to reduce lacquer with benzine, it being warranted by the assured that the lacquering machine is placed outside of the building on an open platform, and that no more than one and one-half gallons of benzine are to be used at one time in the reduction of lacquer, and that no lacquer or benzine shall be kept on the premises other than that used in the lacquering machine.

It is understood and agreed that during the packing season a watchman shall be employed by the assured to be in and upon the premises every night; and that when the packing season is over one or more white men shall be left on the premises who shall have charge of the same and who shall reside in or near the above described premises.

Privilege to make alterations and repairs (external conditions excepted) incidental to the business, for a term not exceeding fifteen days at any one time.

This insurance does not cover any immediate loss or damage to dynamos, exciters, lamps, switches, motors or other electrical machinery caused directly by electric current therein, whether artificial or natural.

July 14th, 1906.

It is understood and agreed that this policy re-insures the St. Paul Fire and Marine Insurance Company, on their interest as insurers, under their department, Policy No 32154 and or open cover 607, and not as originally written.

EDWARD BROWN & SONS,
F. L. B.

This slip is attached to and made a part of Policy No. 502103, issued to ..... by the Svea Ins. Co.

Dated, Oakland, Cal., Jun. 23, 1906.

Christensen, Edwards & Goodwin
Managers
20th Street and Telegraph Avenue
Oakland, Cal.

EDWARD BROWN & SONS,
F. M.

Other re-insurance permitted.

Subject to the same risks, valuations, conditions, adjustments, modes of settlement, endorsements and assignments, changes of interest or of rate as are or may be assumed or adopted by the re-insured, and loss, if any thereunder, is payable pro rata with the re-insured, and at the same time and place.

Attached to and forms part of Policy No. 502103, issued to ..... by Svea Ins. Co.

Christensen, Edwards & Goodwin
Pacific Coast Managers
N. W. Cor. 20th St. & Telegraph Ave.
Oakland, Cal.

Signed EDWARD BROWN & SONS,
F. M.

Jun. 23, 1906.

This policy is made and accepted subject to the following stipulations and conditions, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement indorsed hereon or added hereto, and as to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

IN WITNESS WHEREOF, Edward Brown & Sons, of San Francisco, in the State of California, under the authority of Power of Attorney from the Svea Insurance Co., of Gothenburg, Sweden, have, for and in behalf of the said Company, hereunto affixed their name at San Francisco aforesaid, this 22nd day of June, 1906.

Not valid unless countersigned by the duly authorized Agent at San Francisco, Cal.

E. L. Favor, Special Agent at San Francisco, Cal.

EDWARD BROWN & SONS,
General Agents.

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair ,rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured

touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than 10 o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering, or repairing the within-described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or itherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in

the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above-described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard, (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such

building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specially assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or, by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance, no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy

shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the pro rata premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more location, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same

cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon, all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any buildings, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of the fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss, the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one ,and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss

herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of

the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

[Endorsed on Back]: Standard Fire Insurance Policy of the State of New York. Expires, August 26th, 1906; Property, Bristol, Alaska; Am't, $2,000.00; Premium, $20.00; St. Paul Fire & Marine Ins. Co.; No. 502103. Svea Insurance Company, of Gothenburg, Sweden. Pacific Coast Department, Edward Brown & Sons, General Agents, 1008 Broadway, Oakland, Cal.

Received Jun 29, 1906.

Answered .....

Filed Jan. 11, 1912.

A. M. CANNON,
Clerk U. S. District Court.

Exhibit 51, mentioned in this Bill of Exceptions, and offered in evidence on the trial, was in words and figures as follows:

[Plaintiff's Exhibit 51.]

No. 550017 $5000.00
2.50

THE
GLOBE AND RUTGERS FIRE INSURANCE

COMPANY

Incorporated.

of the City of New York.

Cash Capital $400,000.00

IN CONSIDERATION OF THE STIPULATIONS HEREIN NAMED AND OF One Hundred Twenty-five & No|100 Dollars Premium Does insure Alaska Portland Packers' Association for the term of one year from the 1st day of May, 1910, at noon, to the 1st day of May, 1911, at noon, against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding Five Thousand Dollars, to the following described property while located and contained as described herein, and not elsewhere, to wit:

As per slip hereto attached.

ALASKA PORTLAND PACKERS' ASSOCIATION.

Stock in Cannery.

$5000 On tin, tin cans, manufactured and in process of manufacture, and on materials for making and finishing same; on salmon pickled, frozen and or canned, packed and in process of packing; on nets, rope, web, ice, twine, thread, salt, sugar, paper, lead, corks and lines, barrels, packing boxes and labels and on all other products, materials and supplies incident to the canning, packing, freezing and pickling of salmon; All while contained in the frame building, additions, sheds adjoining and communicat-

ing, occupied as a salmon cannery, and situate at Nushagak, Bristol Bay, Alaska, and or on the wharves and platforms connected therewith.

Permission is hereby granted to run overtime and at night, or cease operations entirely as the interest of the assured may demand, and to make additional alterations and repairs without notice to this Company.

Permission granted to do lacquering in and on the premises, it being warranted by the assured that no more than one day's supply of lacquer, benzine, naphtha or other product of petroleum, except refined kerosene oil, shall be kept in or taken into the main cannery biulding, or other buildings within fifty (50) feet thereof, at any one time; that artificial lights, except electric lights, shall not be used in the building where the lacquering is being done; and that smoking or the use of open lights on the premises shall not be allowed.

In event of loss, the assured to furnish one adjuster for all Companies concerned (should they elect to send one), transportation and subsistence, or cost of same, from Seattle to and at the assured's premises and return.

It is understood and agreed that the value of a case of salmon is $4.50, and that 48 one pound tins shall be taken as a case whether lacquered, labeled and or cased or not, but in case of loss before being lacquered, labeled and or cased, the cost of material for lacquering, labeling and or casing shall be deducted

from said value in ascertaining amount of loss.

Warranted by the assured that no tarring or oiling of nets be allowed within the cannery building, nor nets kept in the cannery building after such tarring or oiling is done until after such nets have been used at least during one fishing season; All nets kept in cannery building to be hung on racks or suspended from the ceiling.

WATCHMAN CLAUSE—It is understood and agreed that during the packing season a watch shall be employed by the assured to be in and upon the premises every night and that when the packing season is over, one man shall be left on the premises, who shall have charge of same, and who shall reside in or near the above described premises.

It is understood that the within described cannery is known as the Alaska Portland Packers' Association's Cannery.

Other Concurrent Insurance Permitted.

This slip is attached to and made part of Policy No. 550017 issued by Globe & Rutgers Fire Ins. Co.

To the Alaska Portland Packers' Association.

April 30th, 1910.

EDWARD BROWN & SONS,

L. G. M.

The liability of this Company for loss or damage to the property insured shall commence upon the landing of same upon the cannery premises from the Ship "Berlin", and shall cease when the loading of the finished product upon the vessel is completed for shipment at end of season unless this policy be trans-

ferred to cover at another place.

Attached to and made part of Policy No. 550017, issued by Globe & Rutgers Fire Ins. Co.

To the Alaska Portland Packers' Association.

Apr. 30th, 1910.

EDWARD BROWN & SONS,
L. G. M.

This policy is made and accepted subject to the following stipulations and conditions, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto, and no officer, agent or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement endorsed hereon or added hereto, and as to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

IN WITNESS WHEREOF, this company has executed and attested these presents this 30th day of April, 1910.

This policy shall not be valid until countersigned by the duly authorized Agent at San Francisco, Cal.

E. C. JAMESON,
President.

Lyman Candee,
Secretary.
Countersigned EDWARD BROWN & SONS,
General Agents.
W. H. Gibbons.

CONDITIONS REFERRED TO IN BODY OF CONTRACT.

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to

this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering, or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or

trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above described premises, benzine, benzol, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard, (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neigh-

boring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under

the original stipulation, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the pro rata premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein

for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and speci-

fications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examination under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and, disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser

respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving

such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

Provisions required by law to be stated in this policy:—This policy is a policy in a stock corporation and is issued under and in pursuance of Sections 130, 131 and 132, of the Insurance Laws of the State of New York.

This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements, or conditions as may be indorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement indorsed hereon or added hereto, and, as to such provisions and conditions, no officer, agent, or representative shall have

such power or be deemed or held to have waived such provisions or conditions, unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

[Endorsed on Back]: Standard Fire Insurance Policy of the State of New York, New Jersey, Connecticut, Rhode Island and North Carolina. Expires May 1, 1911; Property, Nushagak, Alaska; Am't, $5000.00; Premium, $125.00; Alaska Portland Packers' Ass'n; No. 550017. Globe & Rutgers Fire Insurance Company of the City of New York, 76-78 William Street, New York. M. C. Harrison & Co.; Pacific Coast Department Edward Brown & Sons, General Agents; Alaska-Commercial Building, San Francisco, Cal. It is important that the written portions of all policies covering the same property read exactly alike. If they do not they should be made uniform at once. Received May 2, 1910. Ans'd..... M. C. Harrison & Co.

Filed Jan. 11, 1911.

A. M. CANNON,
Clerk U. S. District Court.

Exhibit 56, mentioned in this Bill of Exceptions, and offered in evidence on the trial, was in words and figures as follows, except that there is omitted from said Exhibit the signatures of the subscribers to said covering note:

EXHIBIT 56.

This is to certify that insurance has been opened with the undesigned Underwriters and that policies will be put forward as interest may appear per "Berlin" on Salmon warranted free from particular average unless the vessel be stranded sunk burnt on fire or in collision &c, from Cannery on Bristol Bay to Pacific Coast at 2½ per cent Interest on deck held covered at double premium. Including fire risk from midnight of date of sealing of tins or barrels at 1|8 per cent per month but not exceeding 90 days. Part of $250,000.

"Warranted free from capture, seizure, and "detention, and the consequences of any at- "tempt thereat, piracy and barratry except- "ed, and other consequences of hostili- "ties."

(Signatures of subscribers omitted.)

DUPLICATE.

This is to certify that insurance has been opened with the undersigned underwriters and that policies will be put forward as interest may appear per "Berlin" on Salmon warranted free from particular average unless the vessel be stranded sunk burnt on fire or in collision &c., from Cannery on Bristol Bay to Pacific Coast at 2½ per cent. Interest on deck held covered at double premium. Including fire risk from midnight of date of sealing of tins or barrels at 1|8 per cent per month, but not exceeding 90 days Part of $250,000. Warranted free from capture, seizure and detention and the consequences of any attempt

thereat, piracy and barratry excepted and other consequences of hostilities.

(Signatures of subscribers omitted.)

Exhibit 57, mentioned in this Bill of Exceptions, and offered in evidence on the trial, was in words and figures as follows:

[Plaintiff's Exhibit 57.]

San Francisco, Cal. Portland, Ore. Seattle, Wash.

Office of

M. C. HARRISON & CO.

To St. Paul Fire & Marine Insurance Co.:

Open Insurance is wanted by Alaska Portland Packers' Association.

For account of themselves loss, if any payable to order in San Francisco, for not to exceed $45,165 on salmon in cases and or barrels.

Valued at $4.50 per case, $8.00 per barrel.

Shipped or to be shipped on board the Ship "BERLIN" Sailing not later than Oct. 15th, 1910.

And to be insured from midnight of day on which tins and or barrels are sealed until dispatched from the cannery, warehouse or dock, or upon the expiration of 90 days from attachment of risk, whichever shall first occur.

Free from partial loss and particular average.

Insured against the risk of fire only, in amount and upon terms as per back hereof.

Binding in accordance with the terms and condi-

tions expressed in the Policy to be issued hereunder.

Vessel rated. Tonnage net.

$45,165 @ 1 per cent $.....

$ @ per cent $.....

Total, - - $.....

Loss - - $.....

$.....

Built.

ALASKA PORTLAND PACKERS' ASS'N,

Frank M. Warren,

Presdt. Applicant.

Accepted,

ST. PAUL FIRE & MARINE INSURANCE CO.,

M. C. Harrison & Co.,

G|A s

San Francisco, May 15th, 1910.

Received Aug. 26, 1910.

Answered .....

(Endorsement on back of Plaintiff's Exhibit 57):

It is understood and agreed that this cover attaches to salmon only as per face hereof, the amount of risk at the time of loss or otherwise to be determined in the following manner:

1st. Underwriters in London in the amount of £36,750—$177,135, cover $177,135|250,000ths of the gross value at $4.50 per case and $8.00 per barrel on all salmon on the cannery premises.

2nd. Underwriters in the amount of $27,500 as follows: Globe & Rutgers, $5,000; Svea, $7,000; Agricultural, $3,000; National Union, $7,500; St. Paul, $5,000, cover all supplies remaining ex "BERLIN",

out of shipment in the amount of $76,009, season of 1910.

3rd. Such portions of policies of the Globe & Rutgers, $5,000; Svea, $7,000; Agricultural, $3,000; National Union, $7,500; St. Paul, $5,000, as are not required to cover supplies as per paragraph two, are to attach to salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel.

4th. After deducting the value of all salmon as would be covered by the intended interpretation of paragraphs one and three, from the gross value of all salmon on the cannery premises, the remainder of such value of salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel, shall be covered by this insurance, not exceeding the sum of $45,165.

ST. PAUL FIRE & MARINE INSURANCE CO.,

M. C. H. & Co.

G|A s

Exhibit 61, mentioned in this Bill of Exceptions, and offered in evidence on the trial, was in words and figures as follows:

[Plaintiff's Exhibit 61.]

Aug. 18|10.

Claydott,

London.

Askulmatos

Xirazake

Berlindkef

duhexstfra

duHevalzik

Claydott,
London.
Ask Underwriters Agt. make your lines part of
Berlin (82273) £40000.
(82257) £8500 St. Francis.
(82275) £50,000 (597) Will be acc'd.

(Postal Telegraph Cablegram Blank.)

Delivery No. 532.
Received at Main Office,
Postal Telegraph Bldg.,
Cor. Market and Battery
Sts., San Francisco.
Aug. 19, 1910.
325chj 3
London.
Claydott
San Fran
Daxovgifip.
8:23a.,
(Pencil notation): Arranged 2773 £36750

As you wish 44431. 48500

Defendant's Exhibit "E", mentioned in this Bill of Exceptions, and offered in evidence on the trial, was made up of several different policies of insurance generally spoken of throughout the case as the "Lloyds Policies."

Four policies, in terms and conditions the same as the policy hereinafter set forth, marked Defendant's

Exhibit "E-1", except as to a difference in the amounts insured by each policy, were offered in evidence as part of Defendant's Exhibit "E".

The policy hereinafter marked Defendant's Exhibit "E-2", was offered in evidence as part of said Defendant's Exhibit "E"; and the policy hereinafter marked Defendant's Exhibit "E-3", was offered in evidence as part of Defendant's Exhibit "E".

Four other policies, issued respectively by The World Marine & Insurance Company, Limited, The British Dominions Marine Insurance Company, Ltd., The Merchants' Marine Insurance Company, Limited, and The Economic Insurance Company, Limited, substantially in terms and conditions as the policy issued by The Indemnity Mutual Marine Assurance Company, Limited, herein marked Exhibit "E-3", except as to the amounts insured by each policy, were offered in evidence as part of said Exhibit "E".

Said policies designated 1, 2 and 3, part of Defendant's Exhibit "E", were in words and figures as follows:

[Defendant's Exhibit E-1.]

This Policy is issued in the Form printed and supplied by the Government previous to 1st August, 1887 (with J.H.D.'s additions printed in Italics.

(Seal)
(Three)
(Shillings)
(Seal)
(Two)
(Shillings)
(&)
(Six pence)
(Seal)
(Five pence)

(For Signature by Un-)
(derwriting Members of)
(Lloyds Only.)
(34&35. VIC--LLOYD'S)
(ACT 1871)
J. H. Dott

Any person not an underwriting member of Lloyd's subscribing this policy, or any person uttering the same if so subscribed, will be liable to be proceeded against under Sec. 31 of Lloyd's Act.

S. G.

£ 7000

part of £48,500

For convenience, the words in Italics) have been printed instead of written, but) for the sake of construction they are to) be taken as though written.)

BE IT KNOWN THAT J. H. DOTT as well in his own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance, and cause himself and them and every of them, to be insured, lost or not lost, at and from

Bristol Bay to any place or places in Columbia River. Including fire risk from midnight of date of sealing of tins, say

2 months on £ 567 @ 5|--
1 month on 6433 @ 2|6 per cent

£7000

upon any kind of Goods and Merchandises, and also upon the the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of
and in the good Ship or Vessel called the "Berlin"
whereof is Master, under God, for this present Voyage or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called, beginning the Adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship as above
upon the said Ship, &c.,
and shall so continue and endure, during her Abode there, upon the said Ship, &c.; and further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c., and Goods and Merchandises whatsoever, shall be arrived at as above
upon the said Ship, &c., until she hath moored at Anchor Twenty-four Hours in good safety, and upon the Goods and Merchandises, until the same be there discharged and safely landed; and it shall be lawful for the said Ship, &c., in this Voyage to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever, and for all purposes necessary or otherwise, particularly for orders and or to discharge and or take on board passengers and or cargo, and with liberty to tranship the interest hereby insured, including all risks and accidents arising from transhipment and or incidental to steam and steam navigation; with leave to dock, undock, and change docks as often as may be required; with leave to sail

with or without pilot ,to tow and be towed, and to assist vessels, and or craft in all situations and to any extent, and to render salvage services to lives, vessels or property, without being deemed any deviation and without Prejudice to this Insurance. The said Ship, &c., Goods and Merchandises, &c., for so much as concerns the Assured, by Agreement between the Assured and Assurers in this Policy, are and shall be valued at say on

52402 Cases of Salmon valued at $4.50 per case.

Warranted free from particular average unless the vessel and or craft and or the interest hereby insured be stranded, sunk, burnt, on fire, or a fire occur on board by reason of which loss or damage is caused to the interest hereby insured, or the vessel and or craft be in collision with any other ship or craft or with ice or with any substance other than water; but this Warranty not to exonerate the Underwriters from the liability to pay landing, warehousing, forwarding, or other expenses and all other particular charges should the same be incurred, also to pay the insured value of any package or packages which may be totally lost in transhipment. Each craft and or lighter for the purpose of this policy to be considered as if separately insured.

TOUCHING the Adventures and Perils which we the Assurers are contented to bear and to take upon us in this Voyage, they are, of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of

all Kings, Princes, and people, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises and Ship, &c., or any Part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in, and about the Defence, safeguard and Recovery of the said Goods and Merchandises and Ship, &c., or any Part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein assured. And it is especially declared and agreed that no acts of the Insurer, or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we the Assurers are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured at and after the rate of

Fiftytwo Shillings & eight pence per cent.

IN WITNESS WHEREOF we the Assurers have subscribed our Names and Sums assured in

LONDON, 7 October, 1910.

N. B.—Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from Average, unless General, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under Five Pounds per Cent; and all other Goods, also the Ship, and Freight, are warranted free from Average under Three Pounds per Cent; unless general, or the Ship be stranded, sunk, burnt, on fire, or in collision.

(In case of damage it is recommended that notice be given to the nearest Lloyd's Agent.)

This policy to hold the Assured covered on interest as above by the vessel as above and or craft and or any other steamer or steamers, ship or ships and or any other conveyance or conveyances, until safely delivered at destination as above, or until lost, Including all risk whilst waiting shipment, and all risk of craft and or craft and or boats especially to and from the Ship, or vessel, each craft and or lighter to be deemed a separate insurance. Deck-load to be deemed a separate insurance. Including risk of transhipment.

With leave to call and stay at any ports and or places in and or out of the way for orders and or coals and or any other purposes whatsoever necessary or otherwise. Including risk from warehouse, factory or calendar, and until safely delivered into Consignees' warehouse in the interior.

....General Average and Salvage Charges payable ac-

cording to foreign statement if so claimed, or as per York-Antwerp rules, or as per York-Antwerp rules, 1890, if in accordance with the contract of affreightment.

Including all liberties and exceptions and or exemptions as per Charter-party and or new and or old Bill of Lading. Including Negligence clause.

Seaworthiness of vessel admitted.

Including all risks of negligence, default and or error in judgment of master, mariners, engineers, pilots, or any others of the crew.

In the event of any breach of warranty and or any deviation from the terms or conditions of this policy, it is agreed to hold the assured covered, at a premium to be arranged.

(Signatures Omitted.)

[Defendant's Exhibit E-2.]

THE THAMES AND MERSEY MARINE INSURANCE COMPANY, LIMITED.

No. 1.

Chairman of the Company.

C. S. Hoare.

Board in London.

William Abbott Turnbull
Chairman.

William McFarlane,
Deputy-Chairman.

Sir Murland De Grasse Evans, Bart.

Reginald E. Johnston.

William Wilton Phipps.
Charles W. Tomkinson.
Board in Liverpool
Samuel Gibson Sinclair,
Chairman.
Andrew M. Anderson,
Deputy-Chairman
R. Brooklebank.
Samuel Cross.
Alfred Morrison Turner.
Reginald Q. Wilson.
Board in Manchester.
Charles S. Carlisle,
Chairman.
William H. A. Gaddum,
Deputy-Chairman.
James T. Dorrington.
C. S. Hoare.

* * * * * * *

No. 5279.

£ 1000
part of £ 48500.

* * * * * * *

(L. & L. C.)

Warranted free from particular average unless the vessel or craft be stranded, sunk or burnt, each craft or lighter being deemed a separate insurance.

Underwriters, notwithstanding this warranty, to pay for any damage or loss caused by collision with any other ship or craft, and any special charges for warehouse rent, re-shipping or forwarding, for which

they would otherwise be liable. Also to pay the insured value of any package or packages which may be totally lost in transhipment.

(Seal)
(Five)
(Pence.)
(Seal)
(Five)
(Pence.)

LONDON
Messrs, Barclay & Co.,
Limited.
Bankers.
Messrs. Freshfields,
Solicitors to the Company
C. F. Jervis,
Underwriter.
H. Buckland,
Secretary.
LIVERPOOL.
London City & Midland
Bank, Ltd.
Dale Street Branch,
Bankers.
Messrs. Hill, Dickinson
& Co.,
Solicitors.
T. P. Harper,
Underwriter.
G. E. Martindale,
Secretary.

MANCHESTER.

Lloyd's Bank, Limited, Bankers.
Messrs. Sale & Co., Solicitors.
J. H. Thompson, Underwriter.
Douglas Caine, Secretary.

* * * * * * *

WHEREAS, J. H. DOTT has represented to THE THAMES AND MERSEY MARINE INSURANCE COMPANY, LIMITED, that he is interested in or duly authorized as Owner Agent or otherwise to make the Insurance hereinafter mentioned and described with the said Company and has promised or otherwise obliged himself to pay forthwith for the use of the said Company at the Office of the said Company the Sum of Twenty six pounds six shillings and eightpence as a Premium or Consideration at and after the rate of Fifty two shillings and eightpence per Cent. for such Insurance.

NOW THIS POLICY OF INSURANCE WITNESSETH that in Consideration of the premises and of the said Sum of Twenty six pounds six shillings and eight pence the said Company promises and agrees with the said J. H. Dott, his Executors, Administrators and Assigns that the said Company will pay and make good all such Losses and Damages hereinafter expressed as may happen to the subject matter of this Policy and may attach to this Policy in respect of the sum of ONE THOUSAND Pounds hereby insured which Insurance is hereby declared to be upon

52402 cases SALMON Valued @ $4.50 per case.

Including fire risk from midnight of date of sealing of tins say £919 for one month @ 2|6 per cent
81 for two months @ 5|-- per cent

£1000

in the Ship or Vessel called the BERLIN is at present Master or whoever shall go for Master of the said Ship or
whereof
Vessel lost or not lost at and from
BRISTOL BAY to COLUMBIA RIVER INCLUDING THE RISK OF CRAFT.

Warranted free of Capture and Detention and the consequences thereof or any attempt thereat Piracy excepted and also from all consequences of Hostilities or Warlike Operations whether before or after Declaration of War.

AND the said Company promises and agrees that the Insurance aforesaid shall commence upon the Freight and Goods or Merchandise aforesaid from the loading of the said Goods and Merchandise on board the said Ship or Vessel at as above and continue until the said goods or Merchandise be discharged and safely landed at as above.

AND that it shall be lawful for the said Ship or Vessel to proceed and sail to and touch and stay at any Ports or Places whatsoever in the course of her said Voyage for all necessary purposes without pre judice to this Insurance. AND touching the Adventures and Perils which the Capital Stock and Funds of the said Company are made liable unto or are in-

tended to be made liable unto by this Insurance they are of the Seas Men-ofWar Fire Enemies, Pirates Rovers Thieves Jettisons Letters of Mart and Counter Mart Surprisals Takings at Sea Arrests Restraints and Detainments of all Kings Princes and People of what Nation Condition or Quality soever Barratry of the Master and Marines and of all other Perils Losses and Misfortunes that have or shall come to the Hurt Detriment or Damage of the aforesaid subject matter of this Insurance or any part thereof AND in case of any Loss or Misfortune it shall be lawful to the Insured their Factors Servants and Assigns to sue labor and travel for in and about the Defence Safeguard and Recovery of the aforesaid subject matter of this Insurance of any part thereof without prejudice to this Insurance the charges whereof the said Company will bear in proportion to the sum hereby insured. And it is expressly declared and agreed that no acts of the Insurer or Insured in recovering saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment AND it is declared and agreed that Corn Fish Salt Fruit Flour and Seed

are warranted free from average unless general or the Ship be stranded sunk or burnt and that Sugar Tobacco Hemp Flax Hides and Skins are warranted free from average under Five Pounds per centum unless general or the Ship be stranded sunk or burnt and that all other Goods also Freight are warranted free from average under Three Pounds per centum unless

general or the Ship be stranded sunk or burnt.

IN WITNESS whereof the undersigned on behalf of the said Company have hereunto set their hands, in LONDON, the eighth day of October, 1910.

Examined M

WILLIAM McFARLANE Director

Countersigned WM. H. T. PERKINS, Secretary.

(ENDORSED ON BACK OF POLICY.)

32378

THE THAMES AND MERSEY MARINE INSURANCE COMPANY, LIMITED.

Berlin.

Bristol Bay Columbia R.

£1000 @ 52|8 per cent £ 26 6. 8

Policy Duty 10

£26. 7. 6

RECEIVED

April 27, 1911.

Ans'd .....

8|10|10

J. H. Dott

No. 5297

54|6

Settled Nineteen

Pounds five shillings

and two pence for

balance loss

£19. 5. 2

LONDON 3 Jany. 1911

W. H. MARTIN

Secretary.

(ENDORSEMENTS ON BACK OF POLICY.)

Claimed on a|c of Loss under this policy £530 53|153

Settled Five Hundred thirty Pounds .....Shillings and .....pence on a|c of any claim without prejudice £530

LONDON 29 Nov. 1910

W. H. MARTIN, Secretary

Claimed herein for balance of claim £19: 5: 2

J. H. DOTT

[Defendant's Exhibit E-3.]

(SEAL)
(ONE SHILLING)
(AND)
(THREE PENCE)

THE INDEMNITY MUTUAL MARINE ASSURANCE COMPANY, LIMITED

1, Old Broad Street, London, E. C.

J. H. DOTT.

Established 1824.

Incorporated under the Companies Acts in 1887.

Directors.

Frederick Huth Jackson, Esq., Chairman.

Rt. Hon. the Viscount Milner, G. C. B., G. C. M. G.
Deputy Chairman
Colonel the Hon. Everard Baring, C. V. O.
Henry Bernhard Brandt, Esq.
Herbert Brooks, Esq.
Spencer Henry Curtis, Esq.
John Arthur Gibbs, Esq.
Alexander Heun Goschen, Esq.
Edward Charles Grenfell, Esq.
Cyril Gurney, Esq.
William J. Le Lacheur, Esq.
Sir Charles Day Rose, Bart.
Lewis Alexander Wallace, Esq.
Bankers.—London Joint Stock Bank, Limited.
Bank of England.
Underwriter.—Henry Haslam, Esq.

£1,500.

WHEREAS, J. H. DOTT, hath represented to the INDEMNITY MUTUAL MARINE ASSURANCE COMPANY, LIMITED, that he is interested in, or duly authorized as Owner Agent or otherwise, to make the Assurance hereinafter mentioned and described, with the said Company, and hath promised or undertaken to pay forthwith for the use of the said Company, at the Office of the said Company, the Sum of Thirty seven pounds, ten shillings, as a premium or Consideration at and after the rate of Fifty shillings per Cent. for such Assurance.

NOW THIS POLICY OF ASSURANCE WITNESSETH, THAT IN Consideration of the premises, and of the said Sum of thirty seven pounds, ten

shillings, the INDEMNITY MUTUAL MARINE ASSURANCE COMPANY, LIMITED, doth promise and agree with the said J. H. DOTT, his Executors, Administrators, and Assigns, that the said Company will pay and make good all such Losses and Damages hereinafter expressed as may happen to the subject matter of this Policy and may attach to this Policy in respect of the Sum of Fifteen Hundred Pounds hereby assured, which Assurance is hereby declared to be upon (part of £48,500).

Salmon, valued at $4.50 per case.

F. P. A. as per clause attached.

(Rider attached as follows:)

Warranted free from particular average unless the vessel and—or craft and—or the interest hereby insured be stranded, sunk, burnt, on fire, or a fire occur on board by reason of which loss or damage is caused to the interest hereby insured, or the vessel and—or craft be in collision with any other ship or craft or with ice or with any substance other than water; but this Warranty not to exonerate the Underwriters from the liability to pay landing, warehousing, forwarding, or other expenses and all other particular charges should the same be incurred, also to pay the insured value of any package or packages which may be totally lost in transhipment. Each craft and—or lighter for the purpose of this policy to be considered as if separately insured.

(Stamped,—I. M. M. A. C. London.)

the Ship or Vessel called the "Berlin", whereof .....
.....is at present Master, or whoever shall go

for Master of the said Ship or Vessel, lost or not lost at and from
port or ports in Bristol Bay to a port on the Columbia River.

Including fire risk from midnight of date of sealing of tins, say:—2 6 per cent per month, limit 90 days.

Including the risk of Craft to and from Vessel. General Average and salvage charges payable according to the Foreign Statement, or per York-Antwerp Rules, if in accordance with the contract of affreightment. Held covered in the event of deviation from the terms of this Policy, provided notice be given, and any additional premium required be agreed immediately after receipt of advices. And it is expressly declared and agreed, that no acts of the Insurer or Insured, in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

Warranted free of Capture, Seizure and Detention, and the consequences thereof, or any attempt thereat, Piracy excepted, and also from all consequences of Riots, Civil Commotions, Hostilities, or Warlike Operations, whether before or after Declaration of War.

The Assurance aforesaid shall commence upon the said Ship, at .....
and continue until she hath moored at anchor twenty-four hours in good safety, at .....
and upon the Freight and Goods or Merchandise on board thereof, from the loading of the said Goods or Merchandise on board the said Ship or Vessel at as above, and shall continue until the said Goods or

Merchandise be discharged and safely landed at as above. AND it shall be lawful for the said Ship or Vessel to proceed and sail to, and touch and stay at any Ports or Places whatsoever, in the course of her said Voyage, for all necessary purposes, without prejudice to this Assurance. AND touching the Adventures and Perils which the Company is made liable unto, or is intended to be made liable unto, by this Assurance, they are, of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter Mart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes and People of what Nation, Condition, or Quality soever; Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes, that have or shall come to the Hurt, Detriment, or Damage of the aforesaid subject matter of this Assurance or any part thereof. AND in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labor and travel for, in and about the Defence, Safeguard, and Recovery of the aforesaid subject matter of this Assurance or any part thereof, without prejudice to this Assurance, the Charges whereof the said Company shall bear in proportion to the sum hereby assured. AND it is declared and agreed, that Corn, Fish, Salt, Fruit, Flour, and Seed shall be and are warranted free from Average unless General, or the Ship be stranded; and that Sugar, Tobacco, Hemp, Flax, Hides, and Skins, shall be and are warranted free from Average under Five Pounds per Centum; that all other Goods,

also the Ship and Freight, shall be and are warranted free from Average under Three Pounds per Centum unless General, or the Ship be stranded, sunk, or burnt.

Dated in LONDON, the eighth Day of October, 1910.

Examined—LCP

For the

INDEMNITY MUTUAL MARINE ASSURANCE COMPANY, LIMITED,

Spencer H. Curtis,
Director.

* * * * * * *

(ENDORSEMENTS ON BACK OF POLICY.)

No.15,935.F

502.

THE INDEMNITY MUTUAL MARINE ASSURANCE COMPANY, LIMITED.

Ship "Berlin."

Date 8th. October, 1910.

Received hereon an additional premium of 2|8 per cent.

for Fire Risk

£1500 at 2|8 per cent £2 : — : —

London 14|11|10

For the Directors
A. C. BAKER.

— — — — — — — — — — — — —

RECEIVED
Apr 27 1911

Ans'd .....
Claimed hereon for
loss
£832 : 10 : 4

Cr. J. H. DOTT
Settled hereon Claim on a|c W|P
London 14 Nov. 1910
For the Directors
W. J. V. CHAS. J. SAYER.
£800 : — : —
(Illegible initials.)
Settled hereon Claim for bal. of claim &
S|A expenses
London, 25 Jan. 1911
For the Directors.
W. J. V. CHAS. J. SAYER.
£23 : 18 : 11
(Illegible initials.)

RECITALS CONCERNING TESTIMONY, ETC.

The foregoing contains all of the evidence given, and all of the exhibits introduced, on the trial of said cause, bearing upon the rulings of the court and instructions given and instructions refused, which have been assigned as error, and necessary to explain the bearing of the rulings upon the issues involved.

MOTION FOR DIRECTED VERDICT.

Thereafter, on Friday, December 8, 1911, at the close of the taking of the testimony, defendant moved the court for a directed verdict as follows:

Mr. CAMPBELL: If the Court please, I desire at this time to move that the Court instruct the jury to bring in a verdict in favor of the defendant insurance companies in the pending suits. I make this motion upon the following grounds:

First. That the policies sued upon have been voided by the issuance of non-concurrent insurence in violation of those clauses of the policy contained in line 11 of the printed portion of the policies, reading as follows: "This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on the property covered in whole or in part by this policy."

And upon the further ground that the permission endorsed upon the slip attached to the face of the policies reading "other concurrent insurance permitted" was violated—first, by the procuring of the Lloyd's insurance. Secondly,—by the procuring of the St. Paul Fire & Marine Insurance Company's marine insurance, as covered by the covering note, dated San Francisco, May 15, 1910.

EXCEPTION NO. 1.

Upon the conclusion of the argument upon said motion by counsel for the respective parties, the Court overruled said motion, and thereupon defendant duly excepted to said ruling.

The aforesaid ruling of the Court has been assigned by defendant as error (First assignment of error), and to explain said assignment of error and said ex-

ception taken and reserved to the ruling of the Court in overruling said motion for directed verdict, defendant hereby refers to and incorporates herein the foregoing testimony and Plaintiff's Exhibits Nos. 27½, 32, 33, 34, 35, 37, 38, 43, 44, 45, 51, 56, 57, 61, 64, 65, 66, 67, and defendant's Exhibit "E", which testimony and exhibits are hereinbefore set forth in this Bill of Exceptions.

INSTRUCTIONS REQUESTED BY DEFENDANT.

Thereafter, before the Court instructed the jury and while the jury was at the bar, and before making any argument to the jury, defendant requested the Court in writing, in accordance with the rules of the Court, to give the jury the following instructions:

"You are further instructed that plaintiff procured the policies introduced in evidence and known as Lloyd's policies, which were marine policies covering on salmon covered by the policies in suit. I charge you that such Lloyd's Policies so procured were not for insurance concurrent with the insurance provided by the policies in suit, and that by reason of the procuring of such insurance from Lloyd's the policies sued on herein were voided."

"You are further instructed that subsequent to the issuance of the policies, plaintiff procured from the St. Paul Fire and Marine Insurance Company a marine policy covering against fire on salmon covered by the policies in suit but that said policy so procured was not for insurance concurrent with the insurance provided by the policies in suit and that by reason of the

procuring of such insurance, the policies issued by the defendant Insurance Companies were voided."

EXCEPTION NO. 2.

INSTRUCTION GIVEN THE JURY.

The Court then instructed the jury and gave as part of its instruction the following:

"The policies on their face provide for 'other concurrent insurance,' and I instruct you as a matter of law that the policies taken out by the plaintiff company in the Lloyd and the St. Paul were concurrent within the meaning of these policies, and therefore the defense that the policies were voided because of such insurance is not sustained."

Defendant duly excepted, while the jury was at the bar, to said instruction given the jury, as follows:

Mr. CAMPBELL: I should like to note certain exceptions while the jury is at the bar. I should like an exception to that instruction which the Court gave to the jury to the effect that the insurance procured at Lloyd's was concurrent insurance within the terms and conditions in each policy. And I except to the instruction upon the grounds that that Lloyd's insurance was marine insurance, and did not bear a loss proportionate—in the same proportion as the fire policies, as outlined and stated to the Court in the argument for the motion for a directed verdict.

I also desire to except to that instruction given by the Court, in which it instructed the jury that the marine policy procured from the St. Paul Fire & Marine Insurance Company under date of May 15th, as evi-

denced by the covering note, was concurrent insurance within the terms and conditions of the defendant's policies in suit, for the reason that it appears that these policies were marine policies and did not cover against partial loss, as did the fire policies in the suit; for the reason that they were excess policies, and did not begin to pay, or become liable to pay until after the exhaustion of the fire policies; that if there was a possibility of their becoming liable for a partial loss, they would be subject to the adjustment of marine insurance, and would not bear the loss proportionately.

The giving of said instruction has been assigned by defendant as error (Second assignment of error), and to explain said assignment of error and exception taken and reserved to the giving of said instruction, defendant hereby refers to and incorporates herein the foregoing testimony and Plaintiff's Exhibits Nos. 27½, 32, 33, 34, 35, 37, 38, 43, 44, 45, 51, 56, 57, 61, 64, 65, 66, 67, and defendant's Exhibit "E", which testimony and exhibits are hereinbefore set forth in this Bill of Exceptions.

EXCEPTION NO. 3.

Defendant duly excepted, while the jury was at the bar, to the refusal of the Court to give the requested instruction as follows:

"You are further instructed that plaintiff procured the policies introduced in evidence, and known as Lloyd's policies, which were marine policies covering on salmon covered by the policies in suit. I charge you that such Lloyd's policies so procured were not

for insurance concurrent with the insurance provided by the policies in suit, and that by reason of the procuring of such insurance from Lloyd's, the policies sued on herein were void."

"My grounds for excepting to the refusal to give that instruction are that it was marine insurance, and did not bear this loss in the same proportion as the fire policies, as stated in my argument on motioin for directed verdict."

The refusal to give said instruction as requested has been assigned by defendant as error (Third assignment of error), and to explain said assignment of error and exception taken and reserved to the refusal of the Court to give said instruction, defendant hereby refers to and incorporates herein the foregoing testimony and plaintiff's Exhibits Nos. 27½, 32, 33, 34, 35, 37, 38, 43, 44, 45, 51, 56, 57, 61, 64, 65, 66, 67, and defendant's Exhibit "E", which testimony and exhibits are hereinbefore set forth in this Bill of Exceptions.

EXCEPTION NO. 4.

Defendant excepted, while the jury was at the bar, to the refusal of the Court to give the requested instruction, as follows:

I desire to except to the refusal of the Court to give the following requested instruction:

"You are further instructed that subsequent to the issuance of the policies, plaintiff procured from the St. Paul Fire and Marine Insurance Company, a marine policy covering against fire on salmon, covered by the policies in suit, but that said policy so procured

was not for insurance concurrent with the insurance provided by the policies in suit, and that by reason of the procuring of such insurance, the policies issued by the defendant insurance companies were voided."

"My grounds for that are the same as I have just stated as grounds for exception to instruction the Court gave just previously mentioned. They are marine policies, and do not cover against partial loss, and are for excess insurance, and do not begin to pay —there is no liability upon them until after the fire policies are exhausted."

The refusal to give said instruction as requested has been assigned by defendant as error (fourth assignment of error), and to explain said assignment of error and exception taken and reserved to the refusal of the court to give said instruction, defendant hereby refers to and incorporates herein the foregoing testimony and plaintiff's Exhibits Nos. 27½, 32, 33, 34, 35, 37, 38, 43, 44, 45, 51, 56, 57, 61, 64, 65, 66, 67, and defendant's Exhibit "E", which testimony and exhibits are hereinbefore set forth in this Bill of Exceptions.

Thereupon, on the 12th day of December, 1911, the jury retired to deliberate upon its verdict and thereupon, upon said day, returned into court and rendered a verdict in favor of plaintiff in the sum of four thousand nine hundred and ninety-one and 20-100 (4991·20) dollars, and interest thereon from December 8, 1910, until paid.

Thereupon, on the 12th day of December, 1911, the court, on motion of defendant made in open court, order-

ed that defendant be allowed 20 days from said date within which to file a motion to set aside said judgment, and for a new trial herein, and that execution be stayed upon said judgment for said 20 days, and that defendant be allowed until January 1, 1912, within which to prepare and submit a Bill of Exceptions herein.

EXCEPTION NO. 5.

MOTION FOR NEW TRIAL.

Thereafter, on the 20th day of December, 1911, defendant filed a motion to set aside the judgment herein and for a new trial upon the ground of error in law occurring at the trial and excepted to by defendant, as follows:

(a) The court erred in refusing to grant the motion of the defendant to instruct the jury to find a verdict in favor of the defendant; (b) The court erred in instructing the jury that the insurance taken out by the plaintiff in Lloyds was concurrent insurance within the meaning of the permission attached to the policy sued on in this action; (c) The court erred in instructing the jury that the insurance taken out in the St. Paul Fire and Marine Insurance Company, as appearing from the evidence, was concurrent insurance within the meaning of the permission attached to the policy sued on in this action; (d) The court erred in refusing to give the instructions requested by the defendant, and particularly those instructions requested that the jury be instructed that the defendant's policy was void by (1) the procuring of the Lloyd's insurance, and (2) the St. Paul Fire and Marine Insurance Company's excess policy dated May 15, 1910.

Said motion came on for hearing on said 20th day of December, 1911, and was overruled by the court, and exception to such ruling was duly taken and reserved by defendant.

The said ruling has been assigned by defendant as error (fifth assignment of error), and to explain said assignment of error and said exception taken and reserved to the ruling of the court in overruling said motion to set aside the judgment and for a new trial, defendant refers to and incorporates herein the foregoing testimony and plaintiff's Exhibits Nos. 27½, 32, 33, 34, 35, 37, 38, 43, 44, 45, 51, 56, 57, 61, 64, 65, 66, 67, and Defendant's Exhibit "E", which testimony and exhibits are hereinbefore set forth in this Bill of Exceptions.

EXTENSION OF TIME TO FILE BILL OF EXCEPTIONS, ETC.

Thereafter, on the 29th day of December, 1911, good cause therefor being shown, the court ordered that defendant have until the 6th day of January, 1912, within which to file a Bill of Exceptions, Petition for Wirt of Error, Assignments of Error, Bond on Writ of Error, and further ordering stay of execution on the judgment until said 6th day of January, 1912.

On January 4, 1912, good cause therefor being shown, the court ordered that the defendant have forty (40) days from January 6, 1912, within which to file a Bill of Exceptions, Petition for Writ of Error, Assignments of Error, Bond on Writ of Error, and further ordering stay of execution on the judgment until the expiration of said time.

On Feburuary 15th, the court ordered that defendant

have a further extension of thirty (30) days, within which to file a Bill of Exceptions, Petition for Writ of Error, Assignments of Error, Bond on Writ of Error, and further ordering a stay of execution on the judgment until the expiration of said time.

On March 5, 1912, good cause therefor being shown, the court ordered that defendant have thirty (30) days from March 15, 1912, within which to file a Bill of Exceptions, Petition for Writ of Error, Assignments of Error, Bond on Writ of Error, and further ordering a stay of execution on the judgment until the expiration of said time.

On March 25, 1912, good cause appearing therefor, the court ordered that defendant have thirty (30) days from April 8, 1912,within which to file a Bill of Exceptions, Petition for Writ of Error, Assignments of Error, Bond on Writ of Error, and further ordering a stay of execution on the judgment until the expiration of said time.

On May 4, 1912, good cause therefor being shown, the court ordered that defendant have until the first day of June, 1912, within which to file a Bill of Exceptions, Petition for Writ of Error, Assignments of Error, Bond on Writ of Error, and further ordering a stay of execution on the judgment until the expiration of said time.

On June 1, 1912, good cause therefor being shown the Court Ordered that Defendant have until the 1st day of July 1912, within which to file Bill of Exceptions, Petition for Writ of Error, Assignments of Error, Bond on Writ of Error, and further ordering stay of execution on the judgment until the expiration of said time.

The foregoing constitutes all of the proceedings had, and all of the testimony offered and received and all of the exhibits introduced on the trial of said cause bearing upon the rulings of the court and instructions given and requested instructions refused, which have been assigned as error, and necessary to explain the hearing of the said rulings upon the issues involved.

And now, within the time required by law and the rules of this court, defendant proposes the foregoing as and for its Bill of Exceptions to the rulings of the Court made during the trial of the above entitled action, and prays that it may be settled and allowed as correct.

PAGE, McCUTCHEON, KNIGHT & OLNEY,
and DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Defendant.

ORDER SETTLING, CERTIFYING AND ALLOWING BILL OF EXCEPTIONS.

The foregoing Bill of Exceptions being now presented in due time, and found to be correct, I do hereby certify that the said Bill is a true Bill of Exceptions.

Dated: June 10th, 1912.

R. S. BEAN,
United States District Judge for the District of Oregon.

[Endorsed]: Bill of Exceptions. Filed June 10, 1912. A. M. Cannon, Clerk U. S. Dist. Court.

And afterwards, to-wit, on the 10 day of June 1912, there was filed in said Court a Petition for Writ of Error in words and figures as follows, to-wit:

[Petition for Writ of Error.]

In the District Court of the United States for the District of Oregon.

ALASKA PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

No. 3739.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation, the defendant above named, feeling itself agrieved by the verdict of the jury and the judgment entered thereupon on the 12th day of December, 1911; (and in certain rulings had in these proceedings prior thereunto all of which will more in detail appear from the Assignments of Errors which is filed with this Petition), whereby it was adjudged that plaintiff have and recover from the defendant the sum of five thousand two hundred and ninety-three and 95-100 (5293.95) dollars, together with its costs and disbursements incurred in said action, comes now and petitions said court for an order allowing it, said defendant, to prosecute a Writ of Error to the United States Circuit Court of Appeals in and for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, for the corrections of the errors so complained of, and also that an order be made fixing the amount of the supersedeas bond which the defendant shall give and furnish upon such Writ of

Error that upon the giving of such bond all further proceedings in this Court be suspended, stayed and superseded until the determination of said Writ of Error by the United States Circuit Court of Appeals in and for said Ninth Circuit.

And your petitioner will ever pray, etc.

PAGE, McGUTCHEON, KNIGHT, & OLNEY,
DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for Defendant,

[Endorsed]: Petition for Writ of Error. Filed June 10, 1912. A. M. Cannon, Clerk U. S. Dist. Court.

And afterwards, to wit, on the 10 day of June, 1912, there was filed in said Court Assignments of Error in words and figures as follows to wit:

[Assignments of Error.]

...In the District Court of the United States for the District of Oregon.

ALASKA PORTLAND PACKERS' ASSOCIATION, a corporation,
Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,
Defendant.

No. 3739.

Comes now the above named defendant and files the following assignment of errors upon which it will rely upon its prosecution of a Writ of Error in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment made by this Honorable Court on the 12th day of Decem-

ber, 1911, in the above entitled cause:

The learned court erred as follows:

I.

In overruling the defendant's motion praying for an order of court instructing the jury to bring in a verdict in favor of the defendant, which motion was made upon the following grounds:

(a) That the policy sued upon had been voided by the issuance of non-concurrent insurance in violation of those clauses of the policy contained in line eleven of the printed portion of the policy reading as follows:

"This entire policy, unless otherwise provided by agreement endorsed upon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on the property covered in whole or in part by this policy"

(b) That the permission endorsed upon the slip attached to the face of the policy reading: "Other concurrent insurance permitted" was violated; first, by the procuring of the Lloyd's insurance; and secondly, by the procuring of the St. Paul Fire and Marine Insurance Company's marine excess insurance, as covered by the covering note dated San Francisco, May 15, 1910.

II.

In giving the following instruction to the jury:

"The policies on their face provide for other concurrent insurance, and I instruct you as a matter of law that the policies taken out by the plaintiff company in the Lloyd's and St. Paul Fire and Marine Insurance Company were concurrent within the meaning of these

policies, and therefore that the defense that the policies were voided because of such insurance, is not sustained."

III.

By refusing to give the following instruction to the jury, as requested by the defendant:

"You are further instructed that the plaintiff procured the policies introduced in evidence and known as 'Lloyd's Policies' which were marine policies covering on salmon covered by policies in suit, and I charge you that said Lloyd's policies, so procured, were not for insurance concurrent with the insurance provided by the policies in suit, and that by reason of the procuring of such insurance from Lloyd's, the policies sued on herein were voided."

IV.

By refusing to give the following instruction to the jury, as requested by the defendant:

"You are further instructed that subsequent to the issuance of the policies, plaintiff procured from the St. Paul Fire and Marine Insurance Company a marine policy covering against fire on salmon covered by the policies in suit, but that said policy so procured was not for insurance concurrent with the insurance provided by the policies in suit, and that by reason of the procuring of such insurance, the policies issued by the defendant insurance companies were voided."

V.

By refusing to grant defendant's motion to set aside the judgment herein and for a new trial, made upon the ground of error in law occurring at the trial and ex-

cepted to by the defendant, in this:

(a) The Court erred in refusing to grant the motion of the defendant to instruct the jury to find a verdict in favor of the defendant; (b) The court erred in instructing the jury that the insurance taken out by the plaintiff in Lloyds was concurrent insurance within the meaning of the permission attached to the policy sued on in this action; (c) The Court erred in instructing the jury that the insurance taken out in the St. Paul Fire and Marine Insurance Company, as appearing from the evidence, was concurrent insurance within the meaning of the permission attached to the policy sued on in this action; (d) The Court erred in refusing to give the instructions requested by the defendant, and particularly those instructions requested that the jury be instructed that the defendant's policy was void by (1) the procuring of Lloyds insurance,, and (2) the St. Paul Fire and Marine Insurance Company's excess policy dated May 15, 1910.

WHEREFORE, defendant prays that the said judgment may be reversed and that a new trial be granted.

By PAGE, McGUTCHEON, KNIGHT & OLNEY,
and DOLPH, MALLORY, SIMON AND GEARIN,

Its Attorneys.

[Endorsed]: Assignment of Errors. Filed June 10, 1912. A. M. Cannon, Clerk U. S. Dist. Court.

And afterwards, to wit, on the 10 day of June, 1910, there was filed in said Court an Order Allowing Writ of Error in words and figures as follows, to wit:

[Order Allowing Writ of Error.]

In the District Court of the United States, for the District of Oregon.

ALASKA PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

No. 3739.

Upon motion of John M. Gearin, of the firm of Dolph, Mallory, Simon and Gearin, the attorneys for the defendant in the above entitled cause, and upon the filing of the petition for Writ of Error and Assignment of Errors heretofore filed herein;

IT IS HEREBY ORDERED that the Writ of Error, as prayed for in said petition, be allowed, and that the amount of the supersedeas bond to be given by defendant upon said Writ of Error, be and the same is hereby fixed at the sum of Three Thousand ($3000.00) Dollars, and that upon the giving of said bond all further proceedings in this court be suspended, stayed and superseded, pending the determination of said Writ of Error by the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated this 10 day of June, 1912.

R. S. BEAN,

Judge.

[Endorsed]: Order allowing Writ of Error and Fixing Bond on Writ of Error. Filed June 10, 1912. A. M.

Cannon, Clerk U. S. District Court.

And afterwards, to wit, on the 11 day of June, 1912, there was filed in said Court a Bond on Writ of Error in words and figures as follows, to wit:

[Bond on Writ of Error.]

In the District Court of the United States for the District of Oregon.

ALASKA PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

No. 3739.

KNOW ALL MEN BY THESE PRESENTS: That we, GLOBE AND RUTGERS FIRE INSURANCE COMPANY, a corporation, as principal, and The Title Guaranty & Surety Company, Scranton, Pa., as surety, are held and firmly bound unto the plaintiff in the above entitled action in the sum of Three Thousand ($3000.00) Dollars, to which payment will and truly be made we bind ourselves and each of us jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

SEALED with our seals and dated this 10th day of June, 1912.

WHEREAS, the above named defendant, Globe & Rutgers Fire Insurance Company, a corporation, has sued out a Writ of Error in the United States Circuit Court of Appeals, in and for the Ninth Circuit, to re-

verse the judgment entered in the above entitled action, in favor of the plaintiff therein and against the defendant therein, for the sum of five thousand two hundred and ninety-three and 95-100 ($5293.95) dollars, interest and costs;

NOW, THEREFORE, the condition of this obligation is such that if the above named Globe & Rutgers Fire Insurance Company, a corporation, shall prosecute such Writ of Error to effect, and answer all damages of costs if it shall fail to make good said plea, then this obligation shall be void, otherwise to remain in full force and virtue.

[Seal] THE TITLE GUARANTY & SURETY COMPANY,

By M. Reese,
Its Agent.

[Seal] By Noonan-Humphrey Company,
Agent
By R. F. Noonan,
President.

GLOBE & RUTGERS FIRE INSURANCE,
By Dolph, Mallory, Simon & Gearin,
Its Attorneys.

APPROVED this 11 day of June, 1912.

R. S. BEAN,
Judge.

[Endorsed]: Bond on Writ of Error. Filed Jun. 11, 1912. A. M. Cannon, Clerk U. S. Dist . Court.

And afterwards, to wit, on the 12 day of June, 1912, there was filed in said Court a Writ of Error in words and figures as follows, to wit:

[Writ of Error.]

In the United States Circuit Court of Appeals for the Ninth District.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Plaintiff in Error,

vs.

ALASKA PORTLAND PACKERS' ASSOCIATION, a corporation,

Defendant in Error.

THE UNITED STATES OF AMERICA,—ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA..

To the Judge of the District Court of the United States for the District of Oregon:

GREETING:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable R. S. Bean one of you, between Alaska-Portland Packers' Association, Plaintiff and Defendant in Error, and Globe & Rutgers Fire Insurance Co., Defendant and Plaintiff in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the

same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the Said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the HONORABLE EDWARD DOUGLAS WHITE,

Chief Justice of the Supreme Court of the United States, this 12 day of June, 1912.

A. M. CANNON,

Clerk of the District Court of the United States for the District of Oregon.

[Endorsed]: Writ of Error. Filed June 12, 1912. A. M. Cannon, Clerk.

And afterwards, to wit, on the 12 day of June, 1912, there was filed in said Court a Citation on Writ of Error in words and figures as follows, to wit:

[Citation on Writ of Error.]

United States of America,

District of Oregon,—ss.

To Alaska-Portland Packers' Association, a corporation, and to Carey & Kerr, your attorneys of record GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California,

within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Globe & Rutgers Fire Insurance Company, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 12 day of June in the year of our Lord, one thousand, nine hundred and twelve.

R. S. BEAN,
Judge.

Due service of the within citation on writ of error is hereby admitted at Portland, Oregon, June 12, 1912.

CAREY & KERR,
Attorneys for Defendant in Error.

[Endorsed]: Citation on Writ of Error. Filed June 12, 1912. A. M. Cannon, Clerk.

An afterwards, to wit, on the 19 day of June, 1912, the same being the .....Judicial day of the Regular March, 1912, Term of said Court; Present: the Honorable Chas. E. Wolverton, United States District Judge presiding, the following proproceedings were had in said cause, to-wit:

[Order Enlarging Time to File Record.]

In the District Court of the United States for the District of Oregon.

ALASKA PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

No. 3739.

June 19, 1912.

Now, at this day, for good cause shown, it is ordered that the defendant's time for printing the record and filing and docketing this cause on writ of error in the United States Circuit Court of Appeals Ninth Circuit be, and the same is hereby, enlarged and extended ninety (90) days from this date.

CHAS. E. WOLVERTON,

Judge.

And afterwards, to wit, on the 14 day of September, 1912, the same being the ..... Judicial day of the Repular July, 1912 Term of said Court; Present: the Honorable R. S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Enlarging Time to File Record.]

In the District Court of the United States for the District of Oregon.

ALASKA PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

No. 3739.

September 14, 1912.

Now, at this day, for good cause shown, IT IS ORDERED that the defendant's time for printing the record and filing and docketing this cause on writ of error in the United States Circuit Court of Appeals Ninth Circuit be, and the same is hereby, enlarged and extended thirty (30) days from this date.

R. S. BEAN,

Judge.

And afterwards, to wit, on Saturday, the 12 day of October, 1912, the same being the 89 Judicial day of the Regular July, 1912 Term of said Court: Present: the Honorable R. S. Bean United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Enlarging Time to File Record.]

In the District Court of the United States for the District of Oregon.

ALASKA PORTLAND PACKERS' ASSOCIATION, a corporation,

Plaintiff,

vs.

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation,

Defendant.

No. 3739.

October 12, 1912.

Now, at this day, for good cause shown, IT IS ORDERED that the defendant's time for printing the record and filing and docketing this cuase on writ of error in the United States Circuit Court of Appeals Ninth Circuit be, and the same is hereby, enlarged and extended thirty (30) days from this date.

R. S. BEAN,
Judge.

2

No. 2199

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

GLOBE & RUTGERS FIRE INSURANCE COMPANY (a corporation),

Plaintiff in Error,

vs.

ALASKA-PORTLAND PACKERS ASSOCIATION (a corporation),

Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

I.

Statement of the Case.

The questions presented on this writ of error involve the construction of a rider attached to a New York standard form of a fire insurance policy, authorizing the assured to take out other concurrent insurance, and the determination as to whether other insurance procured was of the character permitted.

The defendant in error, owner and operator of a salmon cannery situated at Nushagak, Bristol Bay, Alaska, through its broker M. C. Harrison & Co., pro-

cured of plaintiff in error a fire insurance policy for $5,000. The policy was of a New York standard form for the term of one year from May 1, 1910, at noon, and covered

> on tin, tin cans, manufactured and in process of manufacture, and on materials for making and finishing same; on salmon pickled, frozen or canned, packed and in process of packing; on nets, rope, web, ice, twine, thread, salt, sugar, paper, lead, corks and lines, barrels, packing boxes and labels and on all other products, materials and supplies incident to the canning, packing, freezing and pickling of salmon; all while contained in the frame building, additions, sheds adjoining and communicating, occupied as a salmon cannery, and situated at Nushagak, Bristol Bay, Alaska, and or on the wharves and platforms connected therewith.

The policy contained, among others, the following condition:

> *"This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy."*

Attached to the policy was a slip providing:

> *"Other concurrent insurance permitted."*

Simultaneously with this policy, defendant in error, through its aforesaid broker, took out policies identical in form, save in amount, with the Svea Fire Insurance Company ($7000), Agricultural Insurance Company ($3000), National Union Fire Insurance Company ($7500), and St. Paul Fire and Marine Insurance Company (Fire Department $5000). Subsequently, on May

15, 1910, defendant in error procured, again through its broker, from the Marine Department of the St. Paul Fire and Marine Insurance Company, of which defendant in error's aforesaid broker was general agent for the Pacific Coast and Alaska, the following contract of insurance:

San Francisco, Cal. Portland, Ore. Seattle, Wash.
Office of
M. C. Harrison & Co.

To St. Paul Fire & Marine Insurance Co.:

Open insurance is wanted by Alaska Portland Packers' Association.

For account of themselves loss, if any, payable to order in San Francisco, for not to exceed $45,165 on salmon in cases and or barrels.

Values at $4.50 per case, $8.00 per barrel.

Shipped or to be shipped on board the Ship "Berlin" sailing not later than Oct. 15th, 1910.

And to be insured from midnight of day on which tins and or barrels are sealed until dispatched from the cannery, warehouse or dock, or upon the expiration of 90 days from attachment of risk, whichever shall first occur.

Free from partial loss and particular average.

Insured against the risk of fire only, in amount and upon terms as per back hereof.

Binding in accordance with the terms and conditions expressed in the Policy to be issued hereunder. Vessel rated. Tonnage net.

$45,165 at 1 per cent. $.....
$..... at.....per cent. $.....
Total, ...$.....
Loss, ...$.....
.....
Built, $.....

Alaska Portland Packers' Assn.,
Frank M. Warren,
Presdt. Applicant.

Accepted:

St. Paul Fire & Marine Insurance Co.,
M. C. Harrison & Co.
G/As.

San Francisco, May 15th, 1910.

Received Aug. 26, 1910.

(Endorsement on back.)

It is understood and agreed that this cover attaches to salmon only as per face hereof, the amount of risk at the time of loss or otherwise to be determined in the following manner:

1st. Underwriters in London in the amount of L36,750—$177,135 cover 177,135/250,000ths of the gross value at $4.50 per case and $8.00 per barrel on all salmon on the cannery premises.

2nd. Underwriters in the amount of $27,500 as follows: Globe & Rutgers, $5,000; Svea, $7,000; Agricultural, $3,000; National Union, $7,500; St. Paul, $5,000; cover all supplies remaining ex "Berlin" out of shipment in the amount of $76,009, season of 1910.

3rd. Such portion of policies of the Globe & Rutgers, $5,000; Svea, $7,000; Agricultural, $3,000; National Union, $7,500; St. Paul, $5,000, as are not required to cover supplies as per paragraph two, are to attach to salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel.

4th. After deducting the value of all salmon as would be covered by the intended interpretation of paragraphs one and three, from the gross value of all salmon on the cannery premises, the remainder of such value of salmon in cases and or barrels, valued at $4.50 per case and $8.00 per barrel, shall be covered by this insurance, not exceeding the sum of $45,165.

St. Paul Fire & Marine Ins. Co.,
M. C. H. & Co.
G/As

Insurance was also procured, by defendant in error, through said broker, at Lloyd's, London, under the following covering notes:

This is to certify that insurance has been opened with the undersigned Underwriters and that policies will be put forward as interest may appear per "Berlin" on Salmon warranted free from particular average unless the vessel be stranded sunk burnt on fire or in collision &c., from Cannery on Bristol Bay to Pacific Coast at 2½ per cent. Interest on deck held covered at double premium. Including fire risk from midnight of date of sealing of tins or barrels at ⅛ per cent per month but not exceeding 90 days. Part of $250,000.

"Warranted free from capture, seizure, and detention, and the consequences of any attempt thereat, piracy and barratry excepted, and other consequences of hostilities."

(Signatures of subscribers.)

DUPLICATE.

This is to certify that insurance has been opened with the undersigned Underwriters and that policies will be put forward as interest may appear per "Berlin" on Salmon warranted free from particular average unless the vessel be stranded sunk burnt on fire or in collision &c., from Cannery on Bristol Bay to Pacific Coast at 2½ per cent. Interest on deck held covered at double premium. Including fire risk from midnight of date of sealing of tins or barrels at ⅛ per cent per month but not exceeding 90 days. Part of $250,000. "Warranted free from capture, seizure, and detention, and the consequences of any attempt thereat, piracy and barratry excepted, and other consequences of hostilities."

(Signatures of subscribers.)

Following the fire, hereinafter mentioned, the Underwriters at Lloyd's, subscribers to the foregoing covering notes, issued policies of insurance in form and figures as set forth in plaintiff in error's Exhibits E-1, E-2, E-3 (Bill of Exceptions, Transcript pp. 484-504).

On August 10, 1910, the property covered by the policies issued by plaintiff in error, the Svea Fire Insurance Company, Agricultural Insurance Company, National Union Fire Insurance Company and St. Paul Fire and Marine Insurance Company (Fire Dept.), was burned, and, together with salmon covered by policies of plaintiff in error, and the other fire insurance companies, and by the Lloyds covering notes, and by the contract of insurance with the St. Paul Fire and Marine Insurance Company (Marine Dept.), was largely destroyed.

Plaintiff in error and the Svea Fire Insurance Company, Agricultural Insurance Company and National Union Fire Insurance Company refused to pay under their policies, denying liability upon the ground, among others, that their policies had been voided by the procurement of the insurance with the Marine Department of the St. Paul Fire and Marine Insurance Company and the Lloyd's insurance, as not being insurance within the permission of "concurrent insurance", authorized by the aforesaid slip attached to the fire policies of said contesting companies.

Action upon said policies, including plaintiff in error's, was thereupon instituted by defendant in error in the Circuit Court of the State of Oregon for the

County of Multnomah. The cause was removed to the Circuit Court of the United States for the District of Oregon. In due course, said cause came on for trial, the actions against said Svea Fire Insurance Company, Agricultural Insurance Company, National Union Fire Insurance Company and plaintiff in error being consolidated by order of Court, for trial. At the conclusion of the taking of the testimony, plaintiff in error moved for a directed verdict in its favor upon the ground:

> "First. That the policies sued upon have been voided by the issuance of non-concurrent insurance in violation of those clauses of the policy contained in line 11 of the printed portion of the policies, reading as follows: 'This entire policy unless otherwise provided by agreement endorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on the property covered in whole or in part by this policy.'
>
> "And upon the further ground that the permission endorsed upon the slip attached to the face of the policies reading 'other concurrent insurance permitted' was violated—first, by the procuring of the Lloyd's insurance. Secondly,—by the procuring of the St. Paul Fire & Marine Insurance Company's marine insurance, as covered by the covering note, dated San Francisco, May 15, 1910."

The Court overruled said motion, and plaintiff in error duly excepted thereto (Transcript pp. 504-505).

Thereafter, before the Court instructed the jury, plaintiff in error requested the Court to instruct the jury as follows:

"You are further instructed that plaintiff procured the policies introduced in evidence and known as Lloyd's policies, which were marine policies covering on salmon covered by the policies in suit. I charge you that such Lloyd's policies so procured were not for insurance concurrent with the insurance provided by the policies in suit, and that by reason of the procuring of such insurance from Lloyd's the policies sued on herein were voided."

"You are further instructed that subsequent to the issuance of the policies, plaintiff procured from the St. Paul Fire & Marine Insurance Company a marine policy covering against fire on salmon covered by the policies in suit, but that said policy so procured was not for insurance concurrent with the insurance provided by the policies in suit and that by reason of the procuring of such insurance, the policies issued by defendant insurance companies were voided."

The Court refused to give said requested instructions, and, thereupon, while the jury was at the bar, plaintiff in error excepted to the refusal of the Court to give said requested instructions (Transcript pp. 508-509).

The Court instructed the jury and gave as part of its instructions the following:

"The policies on their face provide for 'other concurrent insurance,' and I instruct you as a matter of law that the policies taken out by the plaintiff company in the Lloyd and the St. Paul were concurrent within the meaning of these policies, and therefore the defense that the policies were voided because of such insurance is not sustained."

Plaintiff in error duly excepted, while the jury was at the bar, to the giving of said instructions (Transcript pp. 507-508).

The cause was, thereupon, submitted to the jury, and the latter returned a verdict in favor of defendant in error and against plaintiff in error, in the sum of $4,991.20, and interest from December 8, 1910, until paid. Judgment was entered thereon. Thereafter, in due course, plaintiff in error moved said Court to set aside said judgment and for a new trial, which motion was denied, and an exception to such ruling was duly taken by plaintiff in error (Transcript pp. 510-513).

The writ of error herein is prosecuted from said verdict, and the judgment entered thereon.

II.

SPECIFICATION OF ERRORS.

First.

The Court erred in overruling plaintiff in error's motion for an instructed verdict, which motion was made upon the following grounds:

(a) That the policy sued upon had been voided by the issuance of non-concurrent insurance in violation of those clauses of the policy contained in line eleven of the printed portion of the policy reading as follows:

"This entire policy, unless otherwise provided by agreement endorsed upon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on the property covered in whole or in part by this policy."

(b) That the permission endorsed upon the slip attached to the face of the policy reading: "Other concurrent insurance permitted" was violated; first,

> by the procuring of the Lloyd's insurance; and secondly, by the procuring of the St. Paul Fire and Marine Insurance Company's marine excess insurance, as covered by the covering note dated San Francisco, May 15, 1910,

the same being contained in the transcript of record on pages 504-505, and the overruling of said motion constituting Exception No. 1, First Assignment of Error (Transcript pp. 504-505, 517).

Second.

The Court erred in giving the following instruction:

> "The policies on their face provide for 'other concurrent insurance,' and I instruct you as a matter of law that the policies taken out by the plaintiff company in the Lloyd and St. Paul were concurrent within the meaning of these policies, and therefore the defense that the policies were voided because of such insurance, is not sustained",

said instruction being contained in the transcript of record on page 507, and the giving thereof constituting Exception No. 2, Second Assignment of Error (Transcript pp. 507, 517-518).

Third.

The Court erred in refusing to give the following instruction requested by plaintiff in error:

> "You are further instructed that plaintiff procured the policies introduced in evidence, and known as Lloyd's policies, which were marine policies covering on salmon covered by the policies in suit. I charge you that such Lloyd's policies so procured were not for insurance concurrent with the insurance provided by the policies in suit, and

> that by reason of the procuring of such insurance from Lloyd's, the policies sued on herein were voided",

the same being contained in the transcript of record on pages 508-509, and said refusal constituting Exception No. 3, Third Assignment of Error (Transcript pp. 508-509, 518).

Fourth.

The Court erred in refusing to give the following instruction requested by plaintiff in error:

> "You are further instructed that subsequent to the issuance of the policies, plaintiff procured from the St. Paul Fire and Marine Insurance Company, a marine policy covering against fire on salmon, covered by the policies in suit, but that said policy so procured was not for insurance concurrent with the insurance provided by the policies in suit, and that by reason of the procuring of such insurance, the policies issued by the defendant insurance companies were voided",

the same being contained in the transcript of record on pages 509-510, and said refusal constituting Exception No. 4, Fourth Assignment of Error (Transcript pp. 509-510, 518).

III.

BRIEF OF THE ARGUMENT.

Generally stated, the question before this Court for determination is whether the insurance procured from the Marine Department of the St. Paul Fire and Marine Insurance Company and from the Underwriters at

Lloyd's is concurrent with the insurance issued by plaintiff in error. Inasmuch as the specifications of error, save three and four only because of their separate reference to the Lloyd's and St. Paul insurance, all turn upon this question of law, we shall proceed to its discussion in its entirety, without making special reference to each specification.

A. *Plaintiff in Error's Policy.*

Fire Policy No. 550017, Plaintiff's Exhibit 51 (Transcript pp. 139, 465-479), issued by plaintiff in error on April 30, 1910, and delivered to M. C. Harrison & Co., broker for defendant in error (Transcript p. 192), on May 2, 1910, covered certain property belonging to defendant in error for the period of one year from May 1, 1910, at noon. The policy was the standard form of fire insurance policy of the states of New York, New Jersey, Connecticut, Rhode Island and North Carolina (Transcript p. 479). The policy covered what would be generally termed supplies for catching and canning salmon, and on salmon, pickled, frozen and/or canned, packed and in process of packing, all while contained in the frame building, additions, sheds adjoining and communicating, occupied as a salmon cannery, and situate at Nushagak, Bristol Bay, Alaska, and/or on the wharves and platforms connected therewith.

The policy contained, among others, the following printed condition:

> *"This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall here-*

after make or procure any other contract of insuranc, whether valid or not, on property covered in whole or in part by this policy."

This limitation upon the right of the assured to further insure was extended by a rider or slip attached to the policy, providing:

"Other Concurrent Insurance Permitted."

The contract of insurance as thus entered into was not that the policy was to be voided, as the standard form prescribed, by the existence or procurement of other insurance, but was, however, to be void if any insurance other than of the character permitted, was then held or subsequently taken out by the assured upon all or any part of the property covered by the policy in suit. In other words, the endorsement permitting "other concurrent insurance" did not entirely destroy the voidance clause against other insurance, but simply narrowed its scope. The effect of it was as though the policy contained the following clause:

> This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, *except for other concurrent insurance,* whether valid or not, on property covered in whole or in part by this policy.

Allen et al. v. German Amer. Ins. Co. of New York, 25 N. E. 309;

Ostrander on Fire Insurance, 2nd Ed., Sec. 248.

B. *The Lloyd's Insurance.*

After plaintiff in error's policy had been issued and accepted by the assured (defendant in error), the latter

took out the insurance contracted for in what are termed the Lloyd's covering notes (Exhibit 56, Transcript pp. 480-481). These covering notes were subsequently followed by policies issued by the subscribers to the notes, and were of like terms and conditions, save in amount, to those offered in evidence as defendant's Exhibits E-1, E-2, E-3 (Transcript pp. 485-504).

The insurance thus provided by the covering notes and the policies was marine insurance from the cannery on Bristol Bay to Pacific Coast, including *fire risk* from midnight of date of sealing of tins or barrels. The amount covered by the notes and policies totaled $177,135 part of $233,770, valued at $4.50 per case of salmon (Transcript pp. 156-157). The covering notes made it part of $250,000, but the latter figure was subsequently changed to $233,770 (Transcript pp. 156-157, Exhibit 61, Transcript pp. 483-484). That is to say, the Lloyd's insurance covered against the risk of fire on salmon from midnight of the date of sealing of the tins or barrels in which the salmon was packed, valued at $4.50 per case. The amount which it covered was determined by taking 177135/233770ths, or 75.77%, of the value of the salmon at risk, each case valued at $4.50.

The covering notes contained the following significant and very important warranty:

> *"Warranted free from particular average, unless the vessel be stranded, sunk, burnt, on fire or in collision."*

The policy subsequently issued (after the fire) by The Thames and Mersey Marine Insurance Company,

Limited, contained substantially the same warranty, to wit:

> *"Warranted free from particular average, unless the vessel or craft be stranded, sunk or burnt, each craft or lighter being deemed a separate insurance."* (Exhibit E-2, Transcript pp. 491-498.)

The other policies issued (after the fire) by the remaining subscribers to the covering notes contained warranties more favorable to the insured:

> "Warranted free from particular average, unless the vessel and/or craft and/or *interest* (i. e., salmon) hereby insured be sunk, *burnt, on fire,* or a fire occur on board, etc." (Exhibits E-1, E-3, Transcript pp. 485-491; 498-504.)

The warranty *"free from particular average"* has a definite and well recognized meaning in insurance. It is the equivalent of saying that the Underwriter shall not be liable for partial loss, but only for total loss.

> *Barber's Principles of the Law of Insurance,* p. 278;
>
> *Arnould on Marine Insurance,* 8th Ed., Sec. 884, Vol. II.

At the time of the fire, therefore, the only existing contracts of insurance with the Lloyd's Underwriters did not protect the assured against partial loss by fire, unless the vessel in which the salmon should be shipped from the cannery on Bristol Bay to the Pacific Coast, should become stranded, sunk, burnt, on fire, or in collision. Had the Underwriters at Lloyd's stood upon their contractual rights, as they were measured by the covering notes, the assured could not have collected

one dollar of insurance for any loss on the salmon by the fire which occurred, for there was no happening of any of the contingencies necessary to open the particular average warranty.

It is true that the policies subsequently issued by all the subscribers to the covering notes, save The Thames and Mersey Marine Insurance Company, Limited, met this disastrous possibility by extending the contingencies which would open the warranty to include a *fire,* etc., which might happen to the *interest* (i. e., salmon) insured. This was manifestly an enlargement of defendant in error's contractual rights, subsequent to the loss, and of course cannot affect the question of plaintiff in error's rights under the terms of its policy, as the same were determined by defendant in error's initial procurement of the Lloyd's insurance. But be that as it may, the policy issued by The Thames and Mersey Marine Insurance Company, Limited, still *did not insure against partial loss* where the only contingency happening was fire to the salmon on the cannery premises, as was the actual case in the catastrophe which led to this action.

We have, then, this situation created by the procurement of the Lloyd's insurance: Plaintiff in error, and the other fire companies, had insurance upon salmon belonging to the assured on which they were liable for *all losses, both partial and total,* which might occur to the salmon by fire; at the same time, defendant in error had the same interest (salmon) insured against the same casualty (fire) on such conditions that the

Lloyd Underwriters would be liable for a *total loss* of the salmon, *but not for a partial loss,* however great it might be.

The two insurances, if we may so designate them, also differed in another important particular. The policy in suit was a *fire policy,* whereas the Lloyd's covering notes and subsequent policies were strictly *marine insurance contracts,* covering against incidental fire risks on land, contracts not unknown in the insurance business.

> *Arnould on Marine Insurance,* 8th Ed., Sec. 447, N. (e); Sec. 470;
> *Rodocanachi v. Elliott* (1873), L. R. 8 C. P. 649;
> *Simon, Israel & Co. v. Sedgwick* (1893), 1 Q. B. 303.

Notwithstanding they covered an incidental fire risk on land, the Lloyd's covering notes and policies remained *marine insurance* contracts, and any losses under them were subject to adjustment as marine insurance losses are adjusted. That is to say, partial losses, if the Underwriters had become liable therefor by the opening of the warranties against particular average, as they would have done on the happening of any of the contingencies specified in the warranties, would have been determined by taking such proportion of the value fixed in the policies (i. e., $4.50 per case $\times$ number of cases) as the difference between the gross sound and damaged values of the salmon bore to the gross sound value. In other words, the percentage of actual loss is first to be determined by taking as the denominator, the gross sound value, and

as the numerator the difference between the gross sound value and the damaged value, and then such percentage of loss is applied to the value in the policy. Of this result, the Lloyd's Underwriters would have paid 177135/233770ths.

Arnould on Marine Insurance, 8th Ed., Sec. 1009a;

English Marine Insurance Act (1906), Sec. 71.

On the other hand, the loss under the straight fire policies, including plaintiff in error's, was such proportion of the actual cash value of the property damaged or destroyed, as the amount insured bore to the total amount of insurance (Exhibit 51, Transcript pp. 465, 479. See clauses on pages 470 and 477).

It is thus apparent that the liabilities of the Lloyd's Underwriters for partial losses, if they should have become liable by the opening of the warranties, were in no respect determined or affected by the amount of insurance upon the salmon, for the loss of each Underwriter would have been adjusted upon his, or its, own policy, irrespective of any other insurance, or the amount thereof; whereas, the loss under plaintiff in error's policy was directly affected and determined by the total amount of insurance. *The two species of insurance would not, therefore, have borne a partial loss proportionately.*

C. *The St. Paul (Marine Department) Contract.*

Whatever may be urged upon the theory, though it does not sound in reason, that the warranty in the Lloyd's covering notes and policies did not apply to

possible losses of the salmon by fire while on the cannery premises, it cannot be applied to the St. Paul contract. We say that such possible suggestion does not sound in reason for there is nothing contained in the covering notes or the policies which in any way excepts the loss on the salmon by fire on the cannery premises from the operation of the *Free From Particular Average* warranties. And in determining the question of plaintiff in error's rights under the terms of its policy, it has the right to have the Lloyd's covering notes and policies construed according to their legal effect.

The St. Paul Fire and Marine Insurance Company's (Marine Department) contract (Exhibit 57, Transcript pp. 481-483), was a most complicated and ingenious document, for it requires a mathematical prodigy to calculate its liabilities. *But one thing is certain, it did not cover a partial loss.* The contract, which was admitted by defendant in error to have been a binding one (Transcript p. 334), insured salmon in cases and barrels, valued at $4.50 per case and $8.00 per barrel, from midnight of the day on which the tins or barrels were sealed, until dispatched from the cannery, warehouse or dock, or upon the expiration of 90 days from the attachment of the risk. It insured against the risk of *fire only,* in amount and upon the terms appearing on the back of the contract, which terms will be given more specific attention later. *Most important, however, is the fact that it did not insure against partial loss or particular average.*

Defendant in error thus had running upon its salmon during the same time that plaintiff in error's policy attached, for the St. Paul contract was effective under date of May 15, 1910, insurance to the possible extent of $45,165, *which did not cover against partial loss as did plaintiff in error's policy.* In other words, *defendant in error could have collected under plaintiff in error's policy for any loss it might have suffered on salmon, however small, but could not have recovered one dollar of the $45,165 insurance of the St. Paul unless there was a total loss of the salmon insured.* To say the least, it was not a condition which would hold out any inducement to the assured to attempt to save the salmon from total destruction.

Can it be possible that such insurance was concurrent within the permission of plaintiff in error's policy?

But let us examine this contract still further. On the back of the contract, it was stipulated that the amount of the risk at the time of the loss was to be determined in the following manner, conditions which, by a clause on the face of the contract, were a binding part of it:

First. The Underwriters in London were to cover 177135/250000ths, later made 177135/233770ths, of the gross value at $4.50 per case and $8.00 per barrel on all salmon on the cannery premises. We have previously pointed out the import of such contract with the Lloyd's Underwriters.

Second. The insurance provided by the fire companies was, in effect, before determining the liability

of the St, Paul, to cover all supplies remaining ex the "Berlin", defendant in error's cannery ship, out of the shipment in amount of $76,009, of the 1910 season. That is to say, so far as the St. Paul liability was concerned, the fire companies' insurance was first to be applied to the supplies which had been taken to the cannery in 1910 and left over unused.

Third. Such portions of the fire policies as were not required to cover all of the aforesaid left over supplies, were, so far as concerned the St. Paul's liability, to attach to salmon at the stated valuations.

Fourth. After deducting the value of all the salmon which would be covered by the 177135/233770ths of the Lloyd's Underwriters and all that would be covered by the fire policies not required to cover the supplies, from the gross value of the salmon in cases and/or barrels, valued at $4.50 per case and $8.00 per barrel, the remainder of such value would be covered by the St. Paul contract, not exceeding the sum of $45,165.

In other words, the St. Paul would not be required to pay under its contract until the insurance provided by the Lloyd's Underwriters and the fire companies, including plaintiff in error, under their respective contracts, had been exhausted. Or to state it in simple terms, *the insurance procured from the St. Paul Fire and Marine Insurance Company (Marine Dept.) was purely excess insurance.* Such was admitted to be its character by M. C. Harrison & Co., acting in the dual capacity of broker for the assured and General Agent for the Pacific Coast and Alaska of the Marine Department of the St. Paul (Transcript pp. 156, 160).

We are thus confronted with the question, Was such insurance procured from Lloyd's Underwriters and the Marine Department of the St. Paul Fire and Marine Insurance Company, concurrent insurance within the permission endorsed upon plaintiff in error's policy? It is a question not considered in any reported case.

D. *Other Concurrent Insurance Permitted.*

Unless the insurances procured from the Underwriters at Lloyd's and the Marine Department of the St. Paul Fire and Marine Insurance Company were concurrent with the insurance provided by the plaintiff in error's policy, the latter was voided, and the Court below should have granted plaintiff in error's motion for a directed verdict, or have instructed the jury as requested in the instructions, to the refusal of which exception was duly taken.

The question of concurrent insurance under similar slips endorsed upon standard forms of fire policies having the voidance clause against other insurance, has been before the Courts in numerous instances, but without exception, so far as our research has enabled us to discover, the policies over which the questions have arisen have been standard forms of fire policies of similar form to that of the primary policy, save as to the property and amount covered. In no case has the question been considered where the violating insurance was a marine policy covering a fire risk on land on the same property as that insured by a primary policy of standard fire form. And very few are the cases arising on standard fire forms which will assist

the Court in determining the question presented by this case.

The leading case upon the question, decided in 1900, comes from a Court of highest standing, the Court of Errors and Appeals of New Jersey.

In

New Jersey Rubber Co. v. Commercial Union Ass. Co. of London, 46 Atlantic 777,

the question of what constitutes "concurrent insurance" arose on two standard forms of fire insurance policies. The precise question, which necessitated the Court determining what shall constitute concurrent insurance within the terms of a permission similar to that endorsed upon plaintiff in error's policy, was whether the additional permitted insurance was required to cover all of the items covered by the primary policy. The Court held that it was not, but that it was sufficient if it covered only some of said items, *provided that such other insurance was effected on terms which required it to bear proportionally with the primary insurance whatever loss occurs within the range of their common operation.*

The Court's analysis of the elements necessary to constitute concurrent insurance, is so determinative of the question at bar that it merits quotation at length. It held that

> "Concurrent insurance is that which to any extent insures the same interest, against the same casualty, at the same time, as the primary insurance, on such terms that the insurers would bear PROPORTIONALLY the loss happening within the provisions of both

> policies. *It is this last quality of sharing proportionally in the loss, that distinguishes concurrent insurance from mere double insurance. The permission of concurrent insurance* in contrast with a requirement thereof, *gives the insured an option as to the time when he will procure other insurance, the length of its duration, and the property it shall cover, provided it shall proportionally aid the primary insurer in bearing whatever loss may occur within the range of their common operation.''*

If those be the essential elements of concurrent insurance, the application of such a test to the Lloyd's and St. Paul insurance establishes conclusively its non-concurrent character with the insurance provided by plaintiff in error's policy. All three of those insurances covered the same interest, *salmon,* against the same casualty, *fire,* at the same time, *from midnight of date of sealing of tins until dispatched from the cannery premises,* but, they did not bear proportionally the loss happening within the provisions of the policies. *It is in this last quality that the Lloyd's and the St. Paul insurance fails of concurrency.*

The case is cited with approval by Cooley in his Briefs on the Law of Insurance, Vol. II, p. 1846.

The Lloyd's Insurance.

As we have previously pointed out, plaintiff in error's policy covered all losses by fire, both partial and total, however small or large, whereas the Lloyd's covering notes and The Thames and Mersey Marine Insurance Company's policy, issued after the fire, did not cover a partial loss of salmon by fire, unless the warranty was

opened by the vessel transporting the salmon from Bristol Bay to the Pacific Coast, becoming sunk, burnt, stranded, on fire, or in collision.

Under such conditions it cannot be said by any course of reasoning that the two insurances would bear *proportionally* a partial loss by fire, for if one policy covered the loss, and the other did not contribute to it, the latter would manifestly fail in every element of proportionate bearing.

Then again, as we have also shown, plaintiff in error's policy, by its terms, would bear such proportion of any loss as the amount covered by the policy bore to the total amount of insurance, whether valid or not, covering the property. The Lloyd's covering notes and policies, if the free from particular average warranties were opened, as all of the Lloyd's policies, except The Thames and Mersey, would be by a burning of the salmon (i. e. interest insured), so as to make such Underwriters liable for a partial loss, would not bear such partial loss in the proportion of each Underwriter's insurance to the whole insurance, as would plaintiff in error's policy, but would pay such proportion of the amount covered by each Underwriter as the difference between the gross sound and damaged values bore to the gross sound value. In other words, *the proportion of any partial loss borne by plaintiff in error's policy would be based upon the total amount of insurance; the proportion of any partial loss borne by the Lloyd's Underwriters would be unaffected by the total amount of insurance on the property, but*

would be solely determined by the percentage of actual loss.

Surely, *if,* as held by the New Jersey Court, *the quality that determines concurrent insurance is that of bearing the loss proportionally,* the Lloyd's insurance was not within the terms of the permission endorsed upon plaintiff in error's policy, and the latter was, therefore, voided.

The St. Paul Insurance.

There can be no question of the St. Paul contract for insurance not covering partial loss on the salmon by fire, for it alone covered the salmon from midnight of the date of sealing of tins or barrels, until dispatched from the cannery premises, and expressly provided that it should be *free of partial loss and particular average.*

What we have just said, therefore, upon this aspect of the Lloyd's insurance applies with even greater force to the St. Paul contract, for there was no possibility of the warranty being opened so as to protect defendant in error against partial loss, however large. It was liable only for total loss.

The St. Paul insurance, however, failed to meet the test in another important particular. It will be recalled from our previous explanation of that contract, that *it was excess insurance, and would not begin to pay until after both the Lloyd's and the straight fire policies had been exhausted.* Although covering the same interest, salmon, against the same casualty, fire, at the same time as plaintiff in error's policy, wherein can the

St. Paul insurance be said to have borne proportionally a loss by fire, for which plaintiff in error would have been called upon to pay, when it was entirely free from liability for partial loss, and in the event of a total loss did not begin to pay until after plaintiff in error's policy, as well as the Lloyd's and other straight fire policies, had been exhausted?

The conclusion is irresistible that the St. Paul contract was not for insurance concurrent with that provided by plaintiff in error's policy.

No case, other than that of the New Jersey Court of Errors and Appeals, is to be found, so far as we are aware, which even remotely considers the question of concurrent insurance as the same is presented by the combination of insurances effected by defendant in error. Counsel will doubtless cite as their leading authority, a decision in 1898 by Judge Gaynor, in the trial term of the New York Supreme Court, Queens County, in

Gough v. Davis, 52 N. Y. S. 947.

An examination of that case will at once reveal the fact that the policies there in question were the standard New York form, some covering all of the same property, and others only covering specific parts, and the precise question considered, which he decided in the negative, was whether to be concurrent all the policies had to cover on the same property. It is true that in deciding the point involved, he incidentally said that it was sufficient if the policies concurred in time. But

in reaching that conclusion, he was frank to admit that the effect of such construction was to nullify the word concurrent and to make the clause read "other insurance permitted." With the policies of standard New York form, there could be no question of their proportionately bearing the loss, so that the question here involved could not have come to the Court's attention.

We respectfully submit that no Court is justified in reading out of any contract a word of the significance and importance which must have been attached to it by the contracting parties to plaintiff in error's policy when they expressly provided not that other insurance, whatever its character, might be taken out, but that only other *concurrent* insurance was permitted. The fallacy is at once apparent of any argument which holds that the word concurrent was only intended to mean other insurance which concurred in point of time, for if that alone were the restriction upon the character of the insurance, the permission may as well have read "other insurance permitted." No permission was necessary to the taking out of insurance which did not cover the property, in whole or in part, at the same time as the primary policy, for it could matter nothing to the assurer as to character or amount of insurance the assured might take out if it did not attach during the running of its policy, for it would neither increase the moral hazard of its risk, nor affect the amount of its liability. When, therefore, plaintiff in error inserted the qualifying word "*concurrent*" in the permission attached to its policy, it manifestly

intended something more than that the insurance should be merely concurrent in point of time.

Judge Gaynor, however, pertinently points out the purpose of the penalty against other insurance as one protecting the insurer from an increase in moral hazard of the risk. We shall endeavor to shortly show its application to the character of the insurance which defendant in error procured from the Lloyd's Underwriters, and particularly from the St. Paul.

We anticipate from the argument of counsel for defendant in error in the Court below, that reference will be made to the two Iowa cases of *Washburn-Halligan Coffee Company v. Merchants Mutual Fire Insurance Company,* 110 Ia. 423, 81 N. W. 101, and *Corkery v. Security Fire Ins. Co.,* 68 N. W. 792. In both of those cases, the question was as to the necessity of the other insurance covering the same property as the primary insurance, and the Courts held against the contention. But in each of the cases, *the Courts also recognized as a necessary element of concurrent insurance, the sharing of the risk,* a quality certainly wanting in the St. Paul insurance, for it shared no risk with plaintiff in error's policy, *as it was for excess insurance against total loss only, and in no event began to pay until plaintiff in error's liability had been exhausted.* As in both of the cases referred to the policies were apparently standard form of straight fire policies, manifestly the questions presented by the combination of insurance in the case at bar could not have been considered.

Still further, if it is judged by the definitions of the word "concurrent," as given by the standard lexicographers: "acting in conjunction," "contributing to the same event or effect," "co-operating," "joint and equal," "existing together and operating on the same objects," (Webster), the St. Paul insurance falls short of meeting those requirements, for it did not act in conjunction, or jointly, or contribute, with plaintiff in error's policy in meeting a partial loss; nor did they exist together or co-operate so far as that character of loss was concerned.

It was not, therefore, concurrent insurance.

The Moral Hazard.

Judge Gaynor, in the course of his opinion in

Gough v. Davis, supra,

said:

> "The prohibition in insurance policies against other insurance except by consent of the insurer is to avoid the *moral hazard* involved in the case of persons morally capable of insuring heavily, or overinsuring, for the purpose of setting fire to the property, and permission for other insurance is naturally understood as only intended to nullify such prohibition."

If the voidance clause was inserted for prohibition against an increase in the moral hazard of the risk, and a permission for "other insurance" would throw down the barriers against it, then the use of the qualifying word "concurrent" in the permission clause must have intended a restriction upon an increase of moral hazard, and yet give the assured the benefit of an increase in

the amount of his insurance. For instance, with the great value of the salmon which defendant in error packed at its cannery, it was necessary that an endorsement be made upon the straight fire insurance policies taken out, for the total amount provided by those policies ($27,500) was insufficient to fully protect the assured in case the value of the salmon at risk exceeded the amount covered. The permission for "other concurrent insurance" gave defendant in error the right to procure just as unlimited an amount of insurance as would have an endorsement for "other insurance". The use of the word "concurrent" must have been intended, then, as a restraint upon the moral hazard of such increase of insurance. But to give it an interpretation which would construe the insurance taken out by defendant in error with the Lloyd's Underwriters, and particularly with the marine department of the St. Paul, as concurrent, would absolutely eliminate all restriction upon moral hazard, for it is impossible to conceive of any character of insurance which would have created a greater moral hazard.

The insurance provided by the covering notes and the Thames and Mersey policy, only covered a partial loss upon the happening of certain contingencies not connected with a possible fire on the cannery premises, and the St. Paul would not have been liable at all for a partial loss. With a possible liability of $45,165 collectable from the St. Paul *if there should be a total loss, and not one cent of it if the loss was partial,* in what manner could the moral hazard to plaintiff in

error and the other fire companies, of a total loss have been more enhanced?

The amount which plaintiff in error could be called upon to pay, in the event of a partial loss, would not be increased by the procurement of other insurance of standard form, for all such insurance would pay such proportion of the entire loss as each policy bore to the total insurance, not to exceed the actual cash value of the property. In the event of a partial loss, therefore, defendant in error would, under such insurance, have received a full indemnity, but with insurance of the character taken out under the Lloyd's covering notes and the St. Paul contract, *such indemnity could only be had through a total loss.* The conditions which would give rise to every inducement to a total loss, with no incentive to a lessening of a loss, were certainly thus created. Surely the situation was pregnant with moral hazards, which would not have attended had the additional insurance been of standard form.

That moral hazards of the character indicated exist, is given recognition in

> *Funke v. Farmers' Mut. Fire Ins. Ass'n,* 13 N. W., 164.

The Adjustment.

It has been aptly said by *Ostrander on Fire Insurance* (Sec. 248) that:

> "The settlement of claims for loss, where the policies involved are non-concurrent, so frequently results in difficult complications, bad feeling and contention, that the insurer may with excellent

> reason object to continuing the risk unless the other insurance is made to cover in such a manner that the apportionment of the loss when computed will be a simple matter of mathematics. * * *
>
> "The object to be secured is to prevent obscurity and contention in the apportionment of an ascertained loss, to fix definitely the proportion for which each company interested in the misfortune is liable."

If complication in adjustment can be produced by non-concurrency, plaintiff in error had it presented with this combination of insurance. Lloyd's covered 177135/233770ths of the value of the salmon at the stipulated valuation. The fire companies were only liable for such proportion of the loss as their insurance bore to the total amount of insurance. The St. Paul covered against total loss for the excess in value not covered by the Lloyd's and by that portion of the straight fire insurance not exhausted on 1910 supplies.

Manifestly before the liabilities of the fire companies could be determined, the total amount of insurance had to be ascertained. Suppose, then, that a fire of the salmon in the cannery premises, should have occurred when the value of the salmon was less than $233770, and the loss had been partial, what would go to make up the total insurance? Would it include the maximum of $177135 which the Lloyd's Underwriters had issued and the $45,165 of the St. Paul? But the Lloyd's covering notes and The Thames and Mersey policy would not have covered such a loss, whereas, the other Lloyd's policies would have done so. If not the entire amount of Lloyd's insurance, what proportion of it

would be included in the total necessary to determine plaintiff in error's loss? And then suppose that the salmon not destroyed sustained a loss on the way down, so as to have absorbed part of the Lloyd's insurance, what would be the amount of Lloyd's insurance plaintiff in error could have taken into consideration? Likewise, with the St. Paul, would you include all of the $45,165, although it did not cover partial loss, yet had been contracted for as excess against total loss? Still the determination of plaintiff in error's liability absolutely necessitated the ascertainment of the total insurance. To say the least, the adjustment would not be a simple matter of mathematics, to accomplish which has, as the author in effect remarks, led to the objection against non-concurrent insurance. If a simple computation of the apportionment of a loss is possible where insurances are concurrent, then it can hardly be said that these insurances fell within that classification, for a greater complication could not have been devised.

Strenuous effort was made on the trial to fix knowledge upon the fire insurance companies, including plaintiff in error, of the existence of this character of combination insurance. To that end, defendant in error introduced in evidence certain *reinsurance policies* (Exhibits 64, 65, 66 and 67). These policies were issued in 1904 and 1906, and were, as examination will show, in no respect policies of the character of those in suit, including plaintiff in error's. They were strictly for reinsurance of the St. Paul's liability against fire.

That is to say, whatever liability the St. Paul assumed under its policy, the reinsuring companies shared. The policies permitted other reinsurance (Transcript pp. 409, 424, 440, 455). It is a far cry, however, to say that because these companies in 1904 and 1906 reinsured the liability of the St. Paul upon certain fire risks, therefore, the clause "other concurrent insurance permitted", attached to plaintiff in error's policy in 1910, contemplated that insurance of the character taken out by the assured with Lloyd's and the St. Paul should be deemed "concurrent insurance". There is no relation of any character between the two classes of policies. It might well have been that the fire companies would be willing to share a liability that covered only against total loss by fire, but it is an entirely different matter to have its liability, as fixed by a straight fire policy, affected by insurance for total loss only, which did not begin to pay until the fire companies' liabilities had been entirely exhausted.

A large part of the bill of exceptions is taken up with evidence inserted by defendant in error as to the adjuster's effort to figure the loss, and the examination of the assured, and the contention will doubtless be made either that plaintiff in error thus construed the insurance provided by the Lloyd's covering notes and policies, and the St. Paul's contract, as concurrent insurance, or that, by such acts, plaintiff in error is estopped to deny that the Lloyd's and St. Paul's insurance was not concurrent. Whichever contention is made, the effect is to deprive plaintiff in error of the

benefit of the terms of the permission clause. But no such estoppel can be created except by endorsement upon the policy, for the latter provides:

> "This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for. * * *
>
> "This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto, and no officer, agent or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement endorsed hereon or added hereto, and, as to such provisions and conditions, no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions, unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached." (Transcript pp. 477, 478-479, Exhibit 51.)

No such endorsement was ever made upon plaintiff in error's policy, nor were the officers of plaintiff in error ever advised of the non-concurrent insurance until after this action was instituted (Transcript p. 201).

To conclude, we respectfully submit that the insurances procured by defendant in error through the Lloyd's covering notes and policies, and the St. Paul contract, were not, for the many reasons considered,

concurrent with the insurance provided by plaintiff in error's policy, and plaintiff in error's policy was voided thereby. The trial Court, therefore, erred in refusing plaintiff in error's motion for a directed verdict, and in giving the instructions, and in refusing the requested instructions, to which exceptions were duly taken, and form the basis of the assignments of error on which the writ of error herein is prosecuted.

We respectfully submit, therefore, that the judgment of the lower Court should be set aside and reversed, and that the cause may be remanded with instructions for a new trial, or other relief, as this Court shall deem meet and proper for the correction of such errors.

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Attorneys for Plaintiff in Error.

Northern Assurance Company v. Grand View Building Association, 183 U.S. 308.

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No. 2199

United States
Circuit Court of Appeals
Ninth Circuit

GLOBE & RUTGERS FIRE INSURANCE COMPANY, a corporation
Plaintiff in Error
vs.
ALASKA-PORTLAND PACKERS' ASSOCIATION
a corporation
Defendant in Error

On Writ of Error to the United States District Court District of Oregon

Brief of Defendant in Error

STATEMENT.

Supplementing the statement of the plaintiff in error, it may be said that while the answer pleads eleven separate defenses to the complaint, and each of these is based upon what is claimed to be a violation of some requirement of the policy of insurance, and one of these defenses specifies nineteen specific grounds for refusing to pay the insurance, the plaintiff in error now relies upon but one of these numer-

ous claims, namely, that the "other insurance" procured by the insured was not "concurrent" within the meaning of the policy.

As will be seen from the brief of the plaintiff in error the claim rests upon the fact that the marine policies differ in terms, particularly in the matter of apportionment of the loss, from the fire policies.

The defendant in error claims that the words "concurrent insurance permitted" have no such narrow meaning as that now asserted by the insurance company, and in order to show that this is true and that the defendant itself has construed and used the words as meaning something different, it has offered evidence of the practical construction given by the parties before and after the policy was issued, and after the fire occurred.

Some of this evidence will now be shown from the bill of exceptions:

M. C. Harrison & Co., a San Francisco insurance firm, had procured the insurance, and on the trial the court ruled that this firm were not the agents of the insurance companies, but were brokers and agents for the insured. They had been so employed and had procured insurance for the insured upon the same cannery and its contents each year for ten years.

The record shows that M. C. Harrison & Co. had also been given written authority from the Globe & Rutgers Fire Insurance Company and the other fire insurance companies, dated in July, 1909, to procure fire insurance in Alaska, with certain restrictions and

limitations. (Record, p. 127, *et seq.*) Insurance was obtained for these companies by this firm in 1909-1910, in Alaska, to the extent that the premiums thereon ranged from $25,000 to $40,000 per year. The insurance included a great many risks not covered by the letter of instructions, because other risks in many cases were considered far more desirable than those mentioned in the letter. (p. 133.)

Mr. Harrison testified that he had a conversation as to the character of these risks and what insurance should be placed, with Mr. Arthur Brown, of Edward Brown & Sons, general agents for plaintiff in error, in his office, in 1909, "some time in the Spring, perhaps more than one, but I am positive I had at least one conversation." (p. 135-6.)

> "A. The year 1909. As well as with other companies long before that. Mr. Brown wanted to know why I didn't give him some of my salmon business. My reply was that the arrangement being that it must cover at the time by the marine companies under the combination plan, I couldn't do it, but I would give him all I could. He knew of the * * * * * * We had had previous conversation about the business. He had previously written business for me, I think in 1904 and 1905. I am positive that he had written reinsurance in the year 1906, reinsuring the marine department of the St. Paul, which was then writing this marine combination. In this very case * * * * * * I can't testify to that, because my records were burned in the fire of 1906 in San Francisco, but I am positive that he wrote a reinsurance in each of his three com-

panies in the year 1906, reinsuring the Marine Department of the St. Paul, which was then issuing these marine combination policies. The plan was then explained to him; and again in the year 1909, he wrote on this fire risk, the Globe & Rutgers, for me, a direct policy similar to the one in court here; and he also wrote other cannery risks on which I was writing on exactly the same plan. It was all explained to him at the time." (pp. 136-7.)

The witness then testified that he was paid commissions on this insurance by the insurance companies, including the Globe & Rutgers, and received no commission from the insured. (pp. 137-8.)

He further testified:

"Q. Now, will you please explain the transaction under which the policies in question in this suit were issued by these four insurance companies?"

"A. I think I just repeated my promise to the companies to send them some of these risks. I gave instructions to my office to declare to Edward Brown & Sons for their three companies the sum of $15,000, of which we had previously arranged that they in turn were to give $5000 to the Franklin Fire Insurance Company as a reinsurance on one or all of the other three companies. I also instructed $7500 to be declared for the National Union. The risks were declared by the office in the usual course of business. The policies came in and were transmitted to the assured." (p. 139.)

The witness then identified policy No. 550,017 of the Globe & Rutgers Fire Insurance Company, sued on in this action, which was received in evidence as plaintiff's exhibit No. 51.

The witness further testified (p. 142):

"As I stated a while ago I discussed with Mr. Arthur Brown the fact of a majority of this business being placed in that Underwriters in London, as a combination of fire and marine risks, on more than one occasion. I could not say how many."

And on page 146 he said:

"Q. Now, what is the fact as to whether or not such policies—fire policies—were issued by these agencies concurrently with marine insurance on the same risk?" * * * * * *

Court: "You mean through Mr. Harrison?"

"Q. I mean through you—I will add that on the sentence." * * * * * *

"A. I know we gave Mr. Brown's companies * * * * * * risks on several canneries during the year 1909, and also gave him risks on at least three or four canneries during the year 1910."

"Q. In this instance you speak of, was there marine and fire insurance both?"

"A. I would like to modify my answer there as to that 1910. I won't be positive three or four canneries or not, but it was for at least two companies, one of whom now operates one cannery and the other operates three. Whether Mr. Brown's company wrote on all three canneries of the second corporation I am not positive at

this moment, but I know he wrote for the second corporation."

"Q. In those instances you speak of in your answer, state whether or not they were both fire and marine insurance." * * * * * *

"A. The plan was the same." (p. 146-7.)

* * * * * *

"Q. Now, in a communication, plaintiff's exhibit 32 in this case, addressed to F. M. Warren, president of the Alaska-Portland Packers' Association, incorporated, dated San Francisco, October 1st, 1910, and signed by these various insurance companies by their general agents and by Mr. Jolly, adjuster, occurs the following expression: 'Apportionment is based on the wording of the covers and specific contract with the St. Paul Fire & Marine Insurance Company, of which the stock companies have not before been advised.' What is the fact now as to whether that is or is not true as stated in there?"

"A. The fact is that both Mr. Brown—Mr. Arthur Brown,—and Mr. Drennan were advised that this business was being written in conjunction with the marine insurance; that is that the marine policies on the salmon from the time that it was laden at Bristol Bay until it arrived at Portland, also covered the salmon while it was in the cannery. But I don't think that I ever gave them the exact wording of the policies, but told them it was a combination plan of this kind." (p. 148.)

* * * * * *

Juror: "When did you tell them that?"

"A. Told them that before the risk was placed."

Juror: "I thought from what was said it was not until after the loss."

"A. I never gave them the wording of the marine policies until afterwards."

Mr. Campbell: "We move to strike out the answer. It was something that occurred before and has no reference to this policy."

Court: "He has testified as to the general course of business."

"A. I mentioned this in placing this particular business in the Spring."

Court: "You told him then?"

"A. That the most of it was placed as a combination—under a combination plan, the marine companies writing not only the marine risk while at sea, but also on land at the cannery, once the salmon was packed until laden on the ship." (pp. 150-1.)

* * * * * *

"Q. Is it a fact, Mr. Harrison, that you had been instrumental in getting insurance for this plaintiff on this cannery in other years prior to this time?"

"A. Yes, sir; I had had business in my office ever since the cannery was organized, every single year successively, and the business was never placed on what is known as the ordinary plan of ordering $150,000 of insurance whether you got any goods or not."

"Q. No, no; what is the fact as to whether or not prior to this year you had been placing joint marine and fire insurance on the cannery?"

"A. It is a fact." * * * * * *

"A. It is a fact that this same plan had been in use by me for this special cannery during all the time I had the business from its inception."

"Q. What is the fact whether or not either the National Union, the Agricultural, the Svea or the Globe & Rutgers had carried a part of that insurance in previous years on this cannery?"

* * * * * *

"A. My recollection is that the years of 1904 and 1905 both Mr. Brown's companies; which one I cannot say now."

"Q. Which are Mr. Brown's companies?"

"A. The Globe & Rutgers, the Agricultural and the Svea—in 1904 and 1905 they had risks on this same cannery on supplies and on salmon." (pp. 196-7.)

The contention of the insured on the trial was that for many years marine policies that covered salmon when on board ship, and also salmon in the cannery before loaded on the ship, were issued by the marine department of St. Paul Fire & Marine Insurance Company, and that such insurance had been treated as concurrent insurance by the fire insurance companies represented by Brown & Sons as general agents, in San Francisco, including among the fire companies thus participating in the insurance, the plaintiff in error and the other fire companies defending this action.

To establish this course of dealing the insured produced and there were admitted in evidence several policies wherein these fire insurance companies had reinsured the interest of the St. Paul Fire & Marine Insurance Company as insurers in just such joint marine and fire insurance.

Herbert Brown, a member of the firm of Edward Brown & Sons, general agents of the Globe & Rutgers and other fire insurance companies, was a witness for the plaintiff in error. He testified that his companies never, with knowledge that they were doing so, wrote fire insurance in conjunction with Lloyds' Marine, or St. Paul Marine, and that had he known that such marine insurance was to be procured he would not have written the policy in question in this action. (pp. 207-8.) On cross-examination, however, he identified, and there were introduced in evidence, a number of policies that had been issued by that agency, reinsuring, in fire insurance companies represented by that agency, the fire risk in fire and marine combination policies, including such policies on the cannery, and on the supplies therein, belonging to defendant in error. (See pp. 208 to 217 and 220-223.)

One of these instances (see Plaintiff's Exhibit 66, Record, p. 435) was on the very same cannery (the cannery of the defendant in error on Bristol Bay, Alaska) by this very plaintiff in error, Globe & Rutgers Fire Insurance Company. The policy was dated the 23d day of June, 1906. It insured for three months the St. Paul Fire & Marine Insurance Company "on their interest as insurers under their Marine Department Agency Policy, number 32179-32180, or open cover No. 602, issued to Alaska-Portland Packers' Association, covering $50,000," and the description of the items covered, and the terms, conditions and restrictions are almost identical with those set out

in the policy sued on in this action. The policy uses almost the exact phrase of this policy sued on:

> "Permission is hereby granted for other concurrent insurance." (See p. 438.)

We also call attention to the fact that the Globe & Rutgers Insurance Company by the terms of that policy accepted the method of adjustment and settlement prescribed in the marine policy, and Edward Brown & Sons, by their endorsement on the policy provided as follows (p. 440):

> "Subject to the same risks, valuations, conditions, adjustments, modes of settlement, endorsements and assignments, changes of interest or of rate as are or may be assumed or adopted by the reinsured, and loss, if any thereunder, is payable pro rata with the reinsured, at the same time and place.
>
> "Attached to and forms a part of policy No. 341081 issued to.....by Globe & Rutgers Insurance Co.
>
> "CHRISTENSEN, EDWARDS & GOODWIN,
> Pacific Coast Managers,
> N. W. Cor. 20th St. & Telegraph Ave,
> Oakland, Cal
> (Signed) Edward Brown & Sons,
> F. M."

Furthermore, two other policies are in evidence (Plaintiff's Exhibit 64, Record, p. 404; Plaintiff's Exhibit 67, Record, p. 450), issued by the same agency, Edward Brown & Sons, general agents, in the name of another one of the defendants in this action, the Svea Insurance Company, in 1906. These

two policies are similar in purport to the one above referred to as Plaintiff's Exhibit No. 66, and like it contain the expression: "Permission is hereby granted for other concurrent insurance," and also contain the clause accepting the adjustment and apportionment of the marine policy. (See pp. 409 and 455.)

Still another such policy is in evidence issued by the same Edward Brown & Sons in the name of another of the fire insurance companies that is a defendant in these actions, the Agricultural Insurance Company, and upon the same cannery. (Plaintiff's Exhibit 65, Record, p. 419.) This also contains (p. 422) the same provision for other concurrent insurance, and contains the same endorsement as to accepting the methods of the marine company in adjusting and apportioning the loss, and agreement to take its pro rata with the reinsured. (See p. 424.) The policy reinsures the marine policy of the St. Paul Fire & Marine Insurance Company.

All these policies contain the same provision as is in the written portion of the policy sued upon, that in case of loss, the assured is to furnish one adjuster for all the companies concerned (should they elect to send one), transportation and subsistence or cost of same to be furnished. (See pp. 43, 407, 422, 436.)

The policy sued on, as well as the several policies just mentioned, and all the other fire insurance policies that are involved in these actions, contained the following provision:

"This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed thereon."

We now call attention to the practical construction placed upon the words "concurrent insurance" by the defendant in error after the fire, and before the action was begun.

After the destruction of the property by the fire of August 10, 1910, the insured, in compliance with the terms and conditions of the policy, gave to the insurance companies, in writing, immediate notice of the loss, and within the time prescribed by the policy, which is sixty days after the fire, rendered a statement signed and sworn to, setting forth, among other things, the time and origin of the fire, the interest of insured in the said property, the cash value of each item thereof, and the amount of loss therein, all other insurance on said property, together with a copy of each of the descriptions and schedules in all policies, including copies of the cover notes of the insurance procured from the Underwriters at Lloyds' and from

the St. Paul Fire & Marine Insurance Company, and in all respects complied with the terms and conditions of the policy. The proofs of loss so submitted are Plaintiff's Exhibit 27½, on pages 335 to 353.

Thereupon, each of them in writing claimed that by the terms of its policy of insurance, it was not liable for a greater proportion of the loss than the amount insured by its policy bore to the whole insurance covering said property, and in so doing, considered and treated the whole amount of insurance on said property, including the insurance in the Underwriters at Lloyds' and in the St. Paul Fire & Marine Insurance Company cover notes as valid and subsisting insurance on the property. They each proceeded to adjust the loss, and rendered and delivered the statements and claims executed by their respective general agents and managers, and containing the reports of the adjuster. The insured submitted to an examination under oath as to its loss, and as to all matters and things in connection therewith. The adjuster called a meeting of the general agents and managers of all of the insurance companies in interest at San Francisco, California, and asked of the insured affidavits touching the insurance. They submitted to the insured written communications in which they apparently treated all of the insurance as concurrent, and certainly made no claim that their insurance was not concurrent with that obtained from the said Underwriters at Lloyds' and from the St. Paul Fire & Marine Insurance Company, but relied upon the clause of the fire policies relating to the pro-

portion of the loss to be borne, as affected by the total amount of insurance.

In the proofs of loss so submitted was a tabulated statement (p. 343), in which was set out in detail the names of each insurer, including the Underwriters and St. Paul's, with the amount of the insurance in each company; the description of the insurance; whether it covered on salmon only, or on salmon and supplies; the apportionment of loss on each class of property, and the amount of the loss apportioned to each policy. The proofs of loss also set out copies of the covers of the marine insurers. (pp. 347 and 348.)

On October 1, 1910, Mr. E. J. Jolly, the adjuster, sent by the fire insurance companies, addressed a communication to the insured. (See Plaintiff's Exhibit 32 on p. 353.) In this he disputed the correctness of plaintiff's statements as to the amount of insurance in force at the time of the fire. He says (p. 353):

> "*Total Insurance*: I note representation of total insurance, whether valid or not, on said property at time of fire as being $152,141.09 on stock and supplies. Undescribed Underwriters in London are accredited with 'Open Cover' on salmon only 'from midnight of date of sealing of tins or barrels, not exceeding ninety days; part of $250,000.' 'St. Paul Fire & Marine Insurance Company, open cover on salmon only, $26,626.04, as apportioned.' (From reading of form attached this cover seems to provide for Lloyds insurance of $177,135.)"

He then proceeds to make his own statement of the amount of the outstanding insurance as follows:

Underwriters at Lloyds'	$250,000.00
Stock Company's policies	27,500.00
St. Paul Fire & Marine Co.	45,165.00
Total amount of insurance as estimated by Jolly in Exhibit No. 32	$322,665.00

Thus, he intimates that the total amount of insurance may be $322,665, instead of $152,141.09, as claimed by the insured in its proofs of loss, and he then proceeds (p. 354) to demand the production of the contracts of insurance or covers, and an examination of the insured.

That this was authorized by the general agents and managers themselves is seen by their written statement to that effect. (At the foot of p. 357.)

This was followed by a communication signed by the general agents and managers of all the fire insurance companies (see Plaintiff's Exhibit 37, p. 373). These are the very persons authorized by the terms of the policies to countersign them (see p. 46), and without whose signatures the policies "shall not be valid." In this communication these general agents and managers say that the apportionment of the loss to the various policies by the plaintiff in its proof of loss is incorrect, and that this must be corrected to include not only the insurance issued, but that for which covers should have been provided by plaintiff's broker under his instructions (p. 86). In other

words, these officers did not put the construction upon the word "concurrent" that they would now have applied, but claimed that there should be counted insurance that was never taken out. The claim was also made that the insurance of $80,000 on the up cargo (marine insurance), which, however, had expired, should be taken into the calculation. We quote as follows:

> "Total insurance stated in so-called proofs to be: 'One Hundred Fifty-two Thousand, One Hundred Forty-one and Nine One-hundredths.' Your order to broker, dated February 26, 1910, is for $80,000, 'to protect up cargo for two months after landing.' The cargo arrived May 26, 1910; this cover should have been issued to expire July 26, 1910; 'cargo' at that time must have been supplies, and it is fair to presume that your order, a part of same letter, to cover down cargo 'for three months before loading,' would have been called upon by you to contribute for any loss of supplies in excess of the total of $27,500 fire insurance policies in force, had a loss by fire occurred destroying all of the supplies before they had been sealed in tins and became a portion of the season's pack. It is therefore but just to the fire insurance companies that apportionment of loss on supplies includes such portion of insurance ordered to cover down cargo, as would be necessary to cover total value of supplies at plant for use during the packing season.
>
> "As you ordered total insurance of $250,000, and covers were secured by your broker in excess of that amount, it is only fair that all of the

insurance ordered and obtained by your broker should be stated in correct proofs of loss. * * * * * * * (pp. 373-4.)

"Apportionment of Loss: Enclosed herewith is a statement prepared for the companies in interest, setting forth the loss apportioned to the several kinds of insurance issued and to be issued in so far as the evidence presented can be applied. It is very evident that the apportionment which is made a part of so-called proofs of loss was prepared for the purpose of protecting insurance to the detriment of the fire insurance policies. This is not satisfactory or just, and such apportionment must be corrected to bind all of the insurance issued or to be issued for which covers were or should have been provided by your broker on the explicit orders of the secretary of your association as referred to herein." (pp. 376-7.)

Moreover, in this written communication was enclosed an "adjuster's statement" (p. 377) which affirmed that the amount of insurance was:

Lloyds' Cover	$177,135.00
Marine Cover (St. Paul)	45,165.00
Fire policies	27,500.00
Short to complete order	200.00
	$250,000.00
Lloyds' authorized increase	1,545.00
Insurance provided to care for season's pack	$251,545.00

And this adjuster's report proceeds to apportion the loss on salmon and supplies in great detail, (pp.

379-80), treating all of the above as though it were concurrent insurance.

Again, on November 8, 1910, the same general agents and managers send another written communication to the plaintiff (Exhibit C, attached to the Reply; Record, p. 90), in which they enclose further computations and apportionments made by their adjuster (set out on pp. 92-98), and in which they advise the insured that the claim for contribution by all the insurance, whether procured by the broker or not, "is believed to be founded on facts, and legal decisions on similar apportionments support the claim as advanced in this apportionment."

The enclosure, made and signed by the adjuster, makes the claim that the Lloyds and the St. Paul policies not only participate, but must be held to include insurance never taken out, and finally asserts that "the award makes fire and marine insurance contribute in full for loss of supplies and salmon, and is the result of the combined efforts of a well-known marine adjuster and the adjuster for the fire insurance companies in interest." (p. 97.)

Under date December 6, 1910, the fire insurance companies sent to the insured still another communication in which they recognized the marine policies as concurrent insurance (Plaintiff's Exhibit 43 at p. 384). The St. Paul Fire & Marine Insurance Company had in the meantime paid its loss under its fire policy, and after stating that the remaining fire insurance companies desired further information, this

communication proceeds to figure out, by an ingenious but wholly untenable theory, that the total insurance, including the marine policies, amounts to $293,-165.27, instead of $152,141.09, as set out in the proofs of loss. After demanding answers to certain questions, this communication makes this statement:

> "After you have replied to questions herein set forth, and have corrected so-called proofs of loss to set forth evidence correctly, so that proofs of loss and evidence subsequently presented agree, so that companies in interest may know the proper amount to be apportioned and the corrected amount of insurance in force at time of fire to contribute thereon, it will then be determined what may be the disagreement as to the amount of loss, and on the ascertainment thereof, these companies will be prepared to submit such differences to appraisement as provided in policy conditions, reading as follows, etc.:" (pp. 390-1.)

Finally, long after the time allowed by the policy for demanding arbitration, and after ignoring the request that had been made early in the negotiations by the defendant in error for arbitration, the plaintiff in error and the other fire companies (except the St. Paul, which in the meantime had paid the amount of its fire policy), demanded arbitration and named their own adjuster, E. J. Jolly, as a disinterested and impartial arbitrator. The agreement for arbitration thus submitted is Plaintiff's Exhibit 44, set out on page 392. It was never accepted, for the reasons shown on page 403, but it treats the marine policies

as concurrent, and proposes that the agreement and appraisement are for the purpose of ascertaining and fixing the amount of sound value and loss and to adjust other differences.

Among other forms of findings to be submitted according to this proposal were the following:

"That the Lloyds Underwriters are liable for loss on salmon sealed in tins or barrels, whether labeled, lacquered or cased on premises, described in cover attached to proof of loss in the sum of.....$.....

"That the St. Paul Fire & Marine Insurance Co. is liable for loss on salmon sealed in tins or barrels, whether labeled, lacquered or cased on the cannery premises, described in copy of cover attached to proof of loss, in the sum of .....$.....

"That the amount of insurance in force at date of fire as provided in cover of the Underwriters in London, designated 'Form B,' attached to proof of loss, covering on salmon 'from midnight of date of sealing of tins or barrels,' destroyed on cannery premises is...$.....

"That the amount of insurance in force at date of fire, as provided in described cover of the Underwriters in London covering on barges and vessel (marine risk) is .....$.....

"That the amount of insurance in force at date of fire, as provided in cover of the St. Paul Fire & Marine Ins. Co. form attached to proof of loss, covering on salmon 'from date of sealing of tins or barrels' on the cannery premises (fire risk insured) is..$.....

"That the amount of insurance in force at date of fire as provided in cover of the St. Paul Fire & Marine Ins. Co. form attached to proof of loss, covering on Salmon 'From date of sealing of tins or barrels' on the cannery premises (Fire risk insured) is.....$.....

"That the amount of insurance in force at date of fire, as provided in described cover of the St. Paul Fire & Marine Ins. Co. is.....$.....

"That the amount of insurance in force at date of fire, as provided in described cover of the St. Paul F. & M. I. Co. covering on barges and vessel (Marine Risk) is.....$.....

"That the amount of insurance in force at date of fire in fire insurance companies is .....$.....

"That the amount of insurance not issued as ordered from broker to cover fire and marine risk of claimant corporation for the season of 1910, is .....$.....

* * * * * *

"That the amount of loss under the fire insurance policies is.....$.....
"That the amount of loss under the Underwriters of London form is.$.....
"That the amount of loss under the St. Paul Fire & Marine Insurance Co. form is.....$....."
(pp. 400-2.)

In all this correspondence there is not a single word of claim that the other insurance is not concurrent, and the whole contention is that the adjustment of the loss should include insurance that the broker was supposed to have been instructed to obtain but that he did not secure, and insurance to the amount of $80,000 on cargo of supplies while on ship en route to Alaska, which had expired by limitation and had nothing to do with the loss whatever. The insurer seems to assume that the word "concurrent" has the meaning that the insured assumed it had when the other insurance was purchased.

Testimony was offered on the trial tending to show that according to the custom of the business, the cover notes issued for the insurance in the Underwriters of Lloyds' and in the St. Paul Fire & Marine Insurance Company, marine department, are treated as binding insurance, between the insurers issuing them and the insured, from the date thereof, and that

this insurance was paid to plaintiff before the action was begun (p. 334). And also that in marine insurance it is customary to write cover notes first, and it is not customary to write policies until after the loss occurs (p. 335).

POINTS AND AUTHORITIES.

1. The word "concurrent" has more than one meaning, and as used in the policy means operating at the same time.

March's Thesaurus Dictionary.

Webster's Unabridged Dictionary.

It is at best ambiguous, and susceptible of more than one construction.

Parkhurst-Davis Mercantile Co. vs. Merchant Underwriters, 86 N. E., 1062 (Ill.)

Caraher vs. Royal Ins. Co., 17 N. Y. Supp., 858; 63 Hun, 82.

Gough vs. Davis, 52 N. Y. Supp., 947; 24 Misc. Rep., 245.

Washburn-Halligan Co. vs. Merchants' Co., 110 Iowa, 423; 81 N. W., 707; 80 Am. St. Rep., 311.

Corkery vs. Security Fire Insurance Co., 99 Iowa, 382; 68 N. W., 792.

Contra see *New Jersey Rubber Co. vs. Commercial Union Assurance Co.,* 64 N. J. L., 580; 46 Atl., 777.

2. The practical construction given to the word by the parties throughout their dealings together gives weight to the assertion that the word is not used in the restricted sense now claimed.

Chicago vs. Sheldon, 9 Wall. (U. S.), 54.

Lowrey v. Hawaii, 206 U. S., 222; 27 S. C. R., 627.

Brooklyn Life Ins. Co. vs. Dutcher, 95 U. S., 269.

Chicago & R. Co. vs. Northern Pacific Railway, 101 Fed., 795.

Reed vs. Insurance Company, 95 U. S., 23.

The surrounding circumstances may be considered.

Guaranty Trust Co. vs. Koehler, 195 Fed., 669.

Cook vs. Foley, 152 Fed., 49.

Columbus & R. Co. vs. Penn. Co., 143 Fed., 757.

Cleveland-Cliffs Iron Co. vs. East Itasca M. Co., 146 Fed., 232.

3. The contract will be construed liberally to protect the insured against forfeiture.

Mutual Reserve Life Insurance Co. vs. Dobler, 137 Fed., 550.

Phoenix Insurance Co. vs. Wilcox & Gibbs Guano Co., 65 Fed., 728.

New York & P. R. S. S. Co. vs. Ætna Insurance Co., 192 Fed., 214.

Wallace vs. German-American Insurance Co., 41 Fed., 742.

May on Insurance, Vol. I, Sections 174, 175.

Snyder vs. Dwelling House Insurance Co., 59 N. J. Law, 509; 59 Am. St. Rep., 625; 37 Atl., 1022.

Palatine Insurance Co. vs. Ewing, 92 Fed., 113.

4. The liability of the insurance company is fixed by the terms of the policy, and there is no contribution, and no indemnity, and the amount that any other insurance company may pay the insured under its policy is of no concern to this insurer.

Rochester German Ins. Co. vs. Schmidt. 175 Fed., 727.

Fireman's Fund Ins. Co. vs. Palatine Ins. Co. (Cal.), 88 Pac., 908.

4 Cooley's Briefs on Insurance, 3099-3108; also 3862.

Hanover Fire Ins. Co. vs. Brown, 77 Md., 51; 25 Atl., 989, and 27 Atl., 314.

Good vs. Buckeye Etc. (Ohio), 2 N. E., 420.

Page vs. Sun Ins. Office, 74 Fed., 203.

A binding slip, or cover note for marine insurance is a contract that will support a direct action of law.

Kerr vs. Union Marine Ins. Co., 124 Fed., 837.

It is customary to issue cover notes that bind the insurer, and imply that a policy in usual form will follow.

St. Paul Fire & Marine Ins. Co. vs. Balfour, 168 Fed., 212.

5. The written portion of the policy controls the printed portion.

St. Paul Fire & Marine Ins. Co. vs. Balfour, 168 Fed., 215.

ARGUMENT.

We are not here seeking to prove a waiver by the insurance company of any of the terms, conditions or requirements of the policy.

We are not seeking to vary by parole the written words of the policy.

We claim that the written word "concurrent" has more than one meaning, and that the meaning that will protect the insured should be adopted; that the insurer has used the same word in other previously issued policies in which the meaning now insisted upon by the insured was the evident meaning of the insurer; that by previous and subsequent course of dealing with this insured, including the correspondence relating to the adjustment of the loss, the adjuster's reports, etc., the insurer has always assumed that the word is used in the policy in the sense now insisted upon by the insured; and, in short, that the practical interpretation by the parties supports the meaning of the word "concurrent" as given by the trial court. We also claim that, there being no contribution or indemnity among the insurers, in which this insurer would have an interest, and its proportion of liability being precisely fixed by its policy, it has no concern with the particular terms of the policies of other insurers.

1. THE WORD CONCURRENT.

There is nothing in the policy that defines the word concurrent, or gives to it a particular meaning. No attempt was made to prove usage or custom, as ground for the interpretation of the word now claimed by the insurer.

The word may mean the same as "coincide," or it may have other meanings, and in fact generally does mean something else than absolute identity. If concurrent, when used by insurance companies, is to be limited to a signification that is unusual, and that is not given by any lexicographer or by any adjudicated case, then it is plainly the duty of the insurance companies to carefully define the word in the contract of insurance. If it is the intention of insurance companies to refuse to issue policies where other policies not precisely identical in terms cover the same property, they may express this purpose with greater precision by using some other adjective than concurrent, which perhaps never would convey that idea, and certainly would not usually, or necessarily, be given that signification.

Primarily, to concur is to run with, or run together. Events may concur in point of time, but the events are not identical in form or substance. Concurrent causes bring results because they act simultaneously in point of time or otherwise, but not because these causes are necessarily identical. Indeed, generally speaking, concurrent negatives the idea of sameness, except in a point of contact, which may be

either in time or space, or in some other particular. The several concurrent causes that bring a panic are not conceivable as identical. Concurrent jurisdiction does not involve the idea of identity of form of action or proceeding. Concurrent strains, that engineers provide for, are not alike or equal, but contribute to a result, and concurrent votes are those that are not exactly the same in any particular except in acquiescing in the proposal. The "concurrent" evidence of the dictionaries negatives the claim that there is peculiar meaning to be given the word when used to qualify the word "insurance." Concurrent insurance, if it means anything definite, means insurance that operates at the same time, or some part of the same period of time, and possibly it might mean insurance that operates upon the same or some part of the same property insured; but there is no sanction for the claim that it means insurance under policies having identical methods of sharing the loss.

March's Thesaurus Dictionary of the English Language, p. 194, defines concurrent as "acting or co-operating together," and at p. 48 collects numerous verbal expressions in the nature of synonyms for concurrence, an examination of which indicates that the use of the word now claimed by the insurance company is apparently unknown.

Webster's Unabridged Dictionary gives this definition:

1. Acting in conjunction; agreeing in the same

act; contributing to the same event or effect; co-operating; accompanying.

2. Conjoined; associate; concomitant.

3. Joint and equal; existing together and operating on the same objects; as the concurrent jurisdiction of the courts.

The expression, "other concurrent insurance permitted," is at best ambiguous and susceptible of more than one construction.

Parkhurst-Davis Mercantile Co. vs. Merchant Underwriters, 86 N. E., 1062 (Ill.)

In this case

"Each policy provided that it should be void, unless otherwise provided by agreement indorsed thereon or added thereto, if the insured had other insurance on the property, and each policy contained the following: '$150,000 total concurrent insurance permitted.' The complainant had insurance aggregating, with these two policies, $160,000, but did not have other insurance beyond the amount specified if they were excluded. The controversy over the language quoted is whether concurrent insurance means insurance including the policies in question or other insurance concurring with it. 'Concurrent,' as used in the policies, means running with, and it would not be a strained or unnatural construction to say that the parties meant $150,000 of other in-

surance running with these policies. There is evidence tending to show that the parties so understood the meaning of the permission given. * * * * *

"No objection on that ground was made at the time or for a long time afterward, and the inference would be that the underwriters understood the provision as to concurrent insurance the same as the complainant. The most that can be said of the provision is that it was ambiguous and, being equally susceptible of more than one construction, that one must be adopted which is most favorable to the insured. It would have been a very easy matter to have made the provision perfectly clear and definite, and, in view of the rules of construction, we interpret the provision as permitting other insurance concurring with that of the Underwriters to the amount of $150,000."

In *Caraher vs. Royal Ins. Co.,* 17 N. Y. Supp., 858; 63 Hun, 82, policies contained the endorsement "other concurrent insurance permitted, concurrent in form herewith"; others had the endorsement "other insurance permitted without notice until required," or "other concurrent insurance permitted." The policies were not identical in terms, some being the standard form prescribed by the laws of New York, and others not, but all were straight fire policies. Some had the endorsement "loss if any payable to L. M. Thompson, executor, to the extent of his mortgage interest." The insurance companies claimed that their policies were void as not concurrent. The court held it was not made clear that insurance would not be concurrent in form when pay-

able to different persons. All of the insurance was treated as concurrent, as it in all cases would "run together."

The same court held that a policy is not made void by other insurance covering only part of the property insured, although the policy was endorsed to permit concurrent insurance.

Gough vs. Davis, 52 N. Y. Supp., 947; 24 Misc. Rep., 245.

That case was decided by Judge Gaynor, who said:

> "The object was to give the insured permission to have other insurance on the property during the existence of the policy. This would be concurrent in respect of time, though for a shorter period than that of the policy, and in respect of property, though not upon all of it. It would not be wholly, but only partly concurrent, and that is sufficient, I think, to be within the terms of the permission. It does not seem to me that the insured could be expected to understand that the word was used in the precise and restricted sense that the additional policies must exactly concur in covering all of the property, any more than all of the time. It is true that the meaning I adopt would be all expressed in the words 'other insurance,' and that therefore the word 'concurrent' adds nothing, and is purely tautological; but that is nothing unusual. The prohibition in insurance policies against other insurance except by the consent of the insured is to avoid the moral hazard involved in the case of persons morally capable

of insuring heavily, or over-insuring, for the purpose of setting fire to the property, and permission for other insurance is naturally understood as only intended to nullify such prohibition. No one would suspect any lurking reservation in it for some other purpose. * * * If insurers want to express such a meaning and do away with an old inconvenience by the severe alternative of a forfeiture, they should do it unequivocally, for that is the rule applicable."

This decision was affirmed in 136 N. Y., 645.

These two decisions by the New York courts, construing the New York standard form of fire insurance policy, which is the statutory form of policy now in use in that state, and is the same form of policy here sued on, should have some weight.

In *Washburn-Halligan Co. vs. Merchants' Co.*, 110 Iowa, 423; 81 N. W., 707; 80 Am. St. Rep., 311, the words "other concurrent insurance permitted," were construed. There the policies covered machinery and personal property, but one covered all property described in the others, with the possible exception of boilers, and much more. In the course of the opinion the court said:

"Here the clause 'other concurrent insurance permitted' did no more than wipe out the prohibition of the policy. The hazard of excessive insurance was entirely waived, and, insofar as the risk was concerned, it was immaterial whether the additional insurance was on one or all the items covered by the defendant's contract. 'Concurrent insurance,' under the circumstances,

means any insurance running with that of the defendant, and sharing its risk. If so, it would include policies covering not only a part of defendant's risk, but all of it, and more. The definitions of the lexicographers warrant such a conclusion. * * * Might not the assured reasonably understand from this the meaning as we have stated it? * * * The policies were concurrent as to time, though one was for a shorter period than the other. They were concurrent as to the particular property covered by both. In other words, the additional insurance was concurrent in certain respects, though not as to every detail. We are of opinion that the clause, 'other concurrent insurance permitted,' in the absence of any limitation in amount, should not be construed to require the later policies to exactly concur in covering all of the property. Otherwise it should be held that they must also cover all the time. An ordinary man, reading the contract with this clause, in the light of the recognized definitions of 'concurrent,' would not attribute a meaning to the word such as the defendant insists should be given it; and surely the insured cannot be held to have understood it in such a restricted sense. The reasoning of the court in *Gough vs. Davis,* 24 Mis. Rep., 245; 52 N. Y. Supp., 947, supports these views."

In *Corkery vs. Security Fire Ins. Co.,* 99 Iowa, 382; 68 N. W., 792, it was held that the word "concurrent" means acting in conjunction, contributing to the same event or effect; and hence, as used in an insurance policy permitting concurrent insurance, other insurance, covering the insured property and other

property, is within the term concurrent insurance, since it contributes to the same event or effect. Here the other policies procured by the insured covered not only the goods insured in the first company, but goods "held in trust or on commission."

The court said:

> "Defendant claims these policies are non-concurrent, because they do not specify the amount of insurance, separately, on the goods held in trust or on commission. It is conceded that if they specified the sum thereof applicable to the property covered by the policy in suit, they would be concurrent; but it is insisted that, as they are, an adjustment cannot be readily made. The provision as to contribution calls for such adjustment, and the fact that it may not so easily be made as if the policies each covered only the same property is no reason for holding them non-concurrent."

The court will notice that the brief of the plaintiff in error in the case on trial relies upon difficulty of adjusting as one of the grounds for claiming this insurance non-concurrent, but the point seems to be sufficiently answered by the Iowa court in the language above quoted.

The only case that has been found that intimates that sharing proportionately in the loss is the test of whether insurance is concurrent is *New Jersey Rubber Co. vs. Commercial Union Ins. Co.,* 64 N. J. L., 580; 46 Atl., 777, but an examination of that case will show that it has no such meaning as is claimed for it by plaintiff in error. The court was there de-

ciding the case before it, which was upon policies covering different items, some in one policy, and other policies covering all, and the expression relating to the sharing proportionately must not be understood as an attempt to lay down a general definition. But, even if it were otherwise, we contend that where courts differ in the definition of what is concurrent insurance, the expression is, at best, ambiguous.

2. PRACTICAL CONSTRUCTION GIVEN BY THE PARTIES.

In ascertaining the meaning of the word concurrent it is proper to consider the practical interpretation of the word by the parties themselves before they came into court. As already seen, this was done in the cases wherein the courts have had occasion to define the word.

The Supreme Court in *Chicago vs. Sheldon,* 9 Wall., page 54, giving its interpretation of a written contract, added:

> "What adds great weight to this view is, it accords with the practical construction given to the contract by both parties."

An application of this is seen in *Lowrey vs. Hawaii,* 206 U. S., 222; 27 S. C. R., 627, in which many cases illustrating the principle are cited. The court quotes from *Brooklyn Life Insurance Co. vs. Dutcher,* 95 U. S., 269, as follows:

"There is no surer way to find out what parties meant than to see what they have done."

And the opinion then continues:

"So obvious and potent a principle hardly needs the repetition it has received. And equally obvious and potent is a resort to the circumstances and conditions which preceded a contract. Necessarily in such circumstances and conditions will be found the inducement to the contract and a test of its purpose. The conventions of parties may change such circumstances and conditions, or continue them, but it cannot be separated from them. And this makes the value of contemporaneous construction. It is valuable to explain a statute where disinterested judgment is alone invoked and exercised. It is of greater value to explain a contract where self-interest is quick to discern the extent of rights or obligations, and never yield more than the written or spoken word requires."

In further illustration, we call attention to the opinion of Judge Caldwell in the Circuit Court of Appeals, Fourth Circuit, in *Chicago Etc. R. Co. vs. Northern Pacific Railway Co.,* 101 Fed., 795, wherein he quotes an expression that he says has come to be a maxim in the interpretation of contracts:

"'Tell me,' says Lord Chancellor Sudgen, 'what you have done under a deed, and I will tell you what that deed means.'"

A case that may be cited in this connection is *Reed vs. Insurance Co.,* 95 U. S., 23, arising on a policy of marine insurance containing the expression, "the risk to be suspended while vessel is at Baker's Island

loading," and wherein it was decided that "loading" under the circumstances ought not to be held to mean simply the period when the cargo was being taken aboard, but the risk was suspended while at Baker's Island for the purpose of loading, whether actually engaged in the process of loading or not. And the court considered, in arriving at this conclusion, the surrounding circumstances of the contract, and refused to be bound by a strictly literal meaning of the words used.

In the following recent cases the court examines the surrounding circumstances to aid in the interpretation of the words of the contract.

Guaranty Trust Co. vs. Koehler, 195 Fed., 669.
Cook vs. Foley, 152 Fed., 49.
Columbus Etc. R. Co. vs. Penn. Co., 143 Fed., 757.
Cleveland Cliffs Iron Co. vs East Itasca M. Co., 146 Fed., 232.

Now, when this insurance was contracted for the insured required:

(a) Insurance upon its supplies that were about to be sent to the cannery on Nushagak River, Alaska. For this a marine policy of $80,000 in St. Paul Fire & Marine Iusurance Company was procured, which by its terms covered on these supplies for a period of sixty days after arrival at the cannery. (The time limit had expired before the fire, and this policy was not in force at the time.)

(b) Insurance during the packing season against

risk by fire upon the constantly dwindling supplies and the constantly increasing packed salmon; for, as the salmon pack grew, the supplies were used up, being consumed or used in packing. For this, partial insurance was taken out in the fire insurance policies aggregating $27,500, which by their terms covered both on supplies and salmon.

(c) As the salmon pack at the cannery increased and became more and more valuable, and finally while being loaded on ship, and while being transported to destination, a large amount of insurance on the salmon in cans was required. This was procured by marine policies that covered salmon only, for a period of time while on shore before loading, and also while loading, and while on the vessel. By the terms of these policies the fire risk on shore was covered for a time prior to loading.

The fire occurred while the policies of class (b) and class (c) were in force, and it was to protect against just such a contingency that the insurance was procured. As a matter of fact, the value of the supplies still on hand at the time of the fire was nearly $27,500, so that on the trial the insured waived the right to recover on these fire policies for the salmon loss, and the verdict was for the value of the supplies only. The fire policies provided the sole insurance on the supplies at the time of the fire, the marine policies covering salmon only.

Now, we do not claim that the construction put upon these policies by the insured alone is enough to

satisfy the rule of practical construction, although we do claim that the fact may be considered that in no other way than upon the plan used in placing the insurance could the insured, by contracts with underwriters made in advance of the season, be properly protected from day to day during the season.

But such being the practical requirements of the insured, known to the insurer by previous dealings, it may be presumed that the insurer issued its policies well knowing that the combination marine and fire policies were to be taken out under the permission for other concurrent insurance; and certainly, when we find that the general agents and managers put this construction upon their fire policies in the correspondence covering a period of weeks, after the fire, and that they use the word concurrent in the sense that it was used and acted upon by the insured, the rule of practical construction has an important bearing.

3. THE EXPRESSION BEING AMBIGUOUS, OR UNCERTAIN, IS TO BE RESOLVED IN FAVOR OF THE INSURED.

A case very much in point is *Mutual Reserve Life Insurance Company of New York vs. Dobler,* 137 Fed., 550, decided in 1905 by the Court of Appeals for this circuit. The case was that of a life insurance company that was resisting payment upon a pol-

icy of life insurance. This case shows how a word in common use may be given one value by the insurer and another by the insured. We quote from the opinion:

> "In the written application it appeared that to the question, 'Have you now any insurance on your life?' the insured answered, giving the name and amount of a policy which he carried in the Washington Life. To the further question, 'Have you any other insurance?' he answered 'None.' The application, it is true, brought notice to the insured that the agent of the company was to be his agent as to all statements and answers in the application, and the insured therein warranted that he had not made answers other than those which were written, and that he had not given to the agent information or statements contradictory of or inconsistent therewith. The proof was that at that time he held two accident insurance policies which he did not mention in the written application. It seems to us reasonably clear that the first of these questions does not call for a disclosure of any insurance except that which is known as life insurance. In the ordinary understanding and usage there is a well defined distinction between life insurance and accident insurance. * * * * * *
>
> "But it is not necessary to rest the decision of this branch of the case upon the recognized distinction between life and accident insurance. In any view of the case, we think that the most that can be claimed in behalf of the plaintiff in error for the questions so propounded to the applicant was that they were so worded as to leave it uncertain whether they called for a disclosure

of the accident insurance which he carried at that time. If the insurance company in its printed application employed ambiguous terms or words of doubtful import, it cannot complain if they were construed as they were by the applicant, or if the agent so advised him as to their meaning." * * * * *

"In *Continental Life Ins. Co. vs. Chamberlain,* 132 U. S., 304-311; 10 Sup. Ct., 87, 89; 33 L. Ed., 341, the court said: 'The purport of the word "insured" in the question, "Has the said party any other insurance on his life?" is not so absolutely certain as, in an action upon the policy, to preclude proof as to what kind of life insurance the contracting parties had in mind when that question was answered. Such proof does not necessarily contradict the written contract.' In *Thompson vs. Phoenix Ins. Co.,* 136 U. S., 287; 10 Supt. Ct., 1019; 34 L. Ed., 408, the court said: 'If a policy is so drawn as to require interpretation and to be fairly susceptible of two different constructions, the one will be adopted that is most favorable to the insured. This rule, recognized in all the authorities, is a just one, because those instruments are drawn by the company,' citing *First National Bank vs. Hartford F. Ins. Co.,* 95 U. S., 673; 24 L. Ed., 563. In *McMaster vs. N. Y. Life Ins. Co.,* 183 U. S., 25; 22 Sup. Ct., 10; 46 L. Ed., 64, the court said: 'The rule is that if policies of insurance contain inconsistent provisions, or are so framed as to be fairly open to construction, that view should be adopted, if possible, which will sustain rather than forfeit the contract.' " * * * *

In the case *Phoenix Insurance Company vs. Wil-*

cox & Gibbs Guano Company, 65 Fed., 728, in the Court of Appeals, Fourth Circuit, an insurer used in the policy the expression, "subject to co-insurance clause," which was claimed by the company was a restrictive condition. There was no evidence of usage, and the court decided that it devolves upon the insurer to express the restriction in language which conveys the meaning intended.

> "The party who accepts the policy should be informed by it what is the contract for which he pays the premium and upon which he relies for indemnity."

In *New York & P. R. S. S. Co. vs. Ætna Insurance Co.,* 192 Fed., 214, the court said:

> "No word of such an instrument should be disregarded, no ambiguity should be resolved in favor of the company."

In *Wallace vs. German-American Ins. Co.,* 41 Fed., 742, the syllabus says:

> "Where the words employed by an insurance company, of themselves, or in connection with other language therein, or in reference to the subject matter to which they relate, are susceptible of interpretation given them by the assured, although in fact intended otherwise by the insurer, the policy will be construed in favor of the assured."

There, two clauses of the fire insurance policy might be construed together to authorize either party to demand arbitration, but not to absolutely require either party to do so, and this construction being most

favorable to the protection of the rights of the insured, it was the construction adopted by the court.

May on Insurance, Volume 1, in sections 174 and 175, expresses the rule. In section 175 in this language:

> "Sec. 175. *Language taken most strongly against those for whose benefit it is.*—No rule, in the interpretation of a policy, is more fully established, or more imperative and controlling, than that which declares that, in all cases, it must be liberally construed in favor of the insured, so as not to defeat without a plain necessity his claim to the indemnity, which, in making the insurance, it was his object to secure. When the words are, without violence, susceptible of two interpretations, that which will sustain his claim and cover the loss must, in preference, be adopted." * * * *

Snyder vs. Dwelling House Ins. Co., 59 N. J. Law, 509; 59 Am. St. Rep., 625; 37 Atl., 1022, was a case of construction of the kerosene clause of a fire insurance policy. A rather unusual construction was adopted to protect the insured and to not have the insurance forfeited for using kerosene on the premises for other purposes than in lights. The court used this language:

> "If the insurer intended to prohibit the use of kerosene for any other puprose than for lights, it would have been easy to so express the prohibition in its policies. Policies of insurance against fire are taken out by all clasess of persons, educated and uneducated, and no rule of

law is more salutary than that conditions in these instruments, expressed in terms ambiguous and capable of misleading, shall not be allowed to avoid the contract. The members of the sentence within the brackets, to say the least, is confusing and ambiguous when taken in connection with the words which precede it, and should not be allowed to make void this policy under the circumstances of this case."

Another case that throws some light upon the controversy here is *Palatine Insurance Co. vs. Ewing,* 92 Fed., 113. Here the policy contained a provision to the effect that "unless otherwise provided by an agreement endorsed hereon, or added thereto," the policy should be void if the insured had, or should thereafter procure any other contract of insurance on the property. At the time the policy was issued an additional paper or "rider" (the written portion of the policy), was attached, containing the clause as follows:

> "Total insurance permitted is hereby limited to three-fourths of the actual cash value of the property hereby covered, and to be concurrent herewith."

No other permit was endorsed on the policy, though there was at the time other insurance on the property, as the company knew. The court held the other insurance valid, and said:

> "It is not necessary to hold that the consent intended by the clause in the policy proper was a permission to be thereafter given. It might be a consent given contemporaneously with the is-

suance of the policy itself. Indeed, it is not unusual in such instruments to employ language which, although it might upon one, and perhaps the more common, interpretation in ordinary use, have reference to the future, yet, upon comparison with other provisions therein, indicates that reference was had in the general form to the final insertion in the instrument of special provisions which might or might not be required to express the contract in the particular case. * * * *

"But, if this conclusion were not so clear as it seems to us to be, and were only a permissible one, there are several established rules of construction applicable to the subject which concur in inducing the same result. One of these rules is that forfeitures are not favored in law, and the courts will seek to find, if fairly possible, such a construction of the contracts of parties as will relieve them from the inequitable consequences arising therefrom. * * * Another rule which is especially, but not solely, applicable to insurance contracts is that, when the meaning of the instrument, taken as a whole, is doubtful, its several provisions should be construed favorably to the party to whom the undertaking is made, and most strongly against the party in whose interest the provisions are introduced. * * * Still another rule is that, where a special provision is added to the formal contract, the special provision will be taken to dominate the formal part upon the principle that it more surely expresses the final purpose of the parties. It rests upon the same presumption which is applied in giving preference to the written language inserted in an instrument containing formal

> printed language relating to the same subject, for the reason that the former indicates that the attention of the parties was more particularly called to the written parts."

This case cites numerous authorities supporting these several points, but it seems unnecessary to burden this brief with further cases to support the rule.

If it is claimed that Harrison was broker and agent for the insured, we answer that the insurance agent in *Mutual Reserve Life Insurance Co. vs. Dobler,* 137 Fed., 550, cited above, was also the agent of the insured, but the rule was applied nevertheless. And if Harrison used the words, "other concurrent insurance permitted," as meaning something which the common use of the words would imply, it is not the part of the court to impose the penalty of a forfeiture upon the insured. The company accepted the premium (which it still keeps) and issued its policy, the language of which permits the insured to take out the other insurance. It is not necessary now to strain or restrict the words. Even if they have a double meaning, the object of the contract is the protection of the insured.

4. THIS CONTRACT OF INSURANCE IS INDEPENDENT OF ALL OTHERS, AND THERE IS NO INDEMNITY.

It is no valid objection to say that the insurance is not concurrent because the method of adjusting, as-

certaining or apportioning the loss differs under the marine policies from the same under the fire policies. We do not concede that there is any substantial difference, as claimed. In this case, at any rate, the fire insurance companies have no just ground to object on that score, for the amount of liability under the fire policies is fixed and certain by their terms. Each policy says that

> "This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by or expense of removal from premises endangered by fire, than the amount hereby insured bears to the whole insurance, whether valid or not, or by solvent or insolvent insurers covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss may be provided for by agreement or condition written hereon or attached or appended hereto." (Page 447.)

There is no privity between the several fire insurance companies and the insurers who issued the insurance in the Underwriters at Lloyds' or the St. Paul Fire & Marine Insurance Company, and no right of contribution exists between these companies. It is true that the extent of the application of the insurance, or of the contribution to be made by the company, might have been provided for by special agreement, but there was no such agreement made or endorsed upon the policy.

Under this provision, each of these fire insurance

companies is separately and individually liable, if at all, and is not concerned in the amount that may have been paid by any other insurer. The jury, therefore, could not take into consideration the amount of insurance that was paid to the insured by the Underwriters at Lloyds', or by the St. Paul Fire & Marine Insurance Company under the marine policy, but in estimating the amount to be paid by any one of the fire insurance companies were governed by the rule stated in the policy itself.

To state the proposition in another way, the question of what proportion of the loss would be shared by the insurers that issued the marine insurance cannot affect this insurer, for under its policy, which is a separate contract of insurance, the proportion of liability is absolutely fixed, and there is no indemnity.

Rochester German Ins. Co. vs. Schmidt, 175 Fed., 727.

Fireman's Fund Ins. Co. vs. Palatine Ins. Co., (Cal.), 88 Pac., 908.

4 Cooley's Briefs on Insurance, 3099-3108, also 3862.

Hanover Fire Ins. Co. vs. Brown, 77 Md., 64; 25 Atl., 989, and 27 Atl., 314.

Good vs. Buckeye Etc. (Ohio), 2 N. E., 420.

Page vs. Sun Insurance Office, 74 Fed., 203.

In *Rochester German Ins. Co. vs. Schmidt,* 175 Fed., 727, the court pointed out that under such a policy the insured is under no obligation to take out other insurance, and might have elected to carry any part

of the insurance himself. This case seems to us to completely answer the contention of the plaintiff in error that insurance is not concurrent which will under some circumstances contribute in different proportions.

Since no right of contribution exists, it is a matter of no concern to the insurer under a New York standard form of policy, such as is here in question, that the insured takes out more insurance, unless, of course, there is a fraudulent over-insurance. In the latter case the insurer has a remedy for the fraud. If, on the other hand, there was a liability for indemnity or contribution, it might be a matter of interest to the insurer to know the amount of other insurance beforehand, and he might find it advisable to stipulate as to the amount of concurrent or co-existing insurance, as is often done.

The stipulation in the policy, "other concurrent insurance permitted," imposes no burden on the insurer. If there be other insurance, the amount of his liability is reduced, unless the total loss exceeds the total insurance, in which case, of course, the insurer is liable for no more than the amount stated in his policy, anyway. But it is a highly important concession to the insured, for on large plants one insurance company can rarely insure to the amount required for protection.

In *Page vs. Sun Insurance Office* (74 Fed., 203), in the Court of Appeals, Eighth Circuit, the policies of insurance covered on property situate in two sep-

arate blocks, and there were questions of apportionment of the loss, arising out of the fact that some of the policies covered on the entire property, and some on a part of the property, on which there was a partial loss. Judge Sanborn, in the opinion, quotes the clause from the policy, which is the same clause we have quoted above, and said:

> "The question before us is not what contribution each company which insured this property ought in equity to make to the payment of this loss, in the absence of express contracts fixing their liabilities, and we are compelled to decline to follow counsel into the consideration of that and cognate questions. It is not our province to make contracts for the parties to this suit, or to modify those which they have themselves deliberately made, because it appears to us that they might have made those that would have been more equitable or more advantageous. They have made a contract themselves which fixes the amount of the liability of the defendant for this loss. This action is founded on that contract, and it is the sole measure of the defendant's liability. The only question here is whether or not the plaintiffs in error may recover, under this policy, any greater proportion of the loss upon the property which it describes than that which the amount insured by it bears to the entire insurance covering that property. The policy expressly provides that they cannot, and that must close this discussion."

It is not necessary, in our view, to follow the argument of counsel for the plaintiff in error upon the terms and provisions of the marine policies.

It has long been established that a binding slip or cover note is in itself a contract of insurance and that a direct action of law will lie upon it, as well as a suit in equity.

Kerr vs. Union Marine Ins. Co., 124 Fed., 837.

That it is customary to issue cover notes, which bind the insurer, and imply that a policy in the usual form will follow, will be seen by reference to

St. Paul Fire & Marine Ins. Co. vs. Balfour, 168 Fed., 212.

Until after the loss the marine policies were not issued, and the particular stipulations therein, like the F. P. A. clause, could have had no bearing upon the contract of insurance here sued upon.

5. CONCLUSION.

The argument made by the plaintiff in error in this case that the body of the policy expresses the contract, and that, unless the consent of the company is endorsed on the policy, the other insurance makes this policy void, is unavailing. In the first place, the consent to other insurance is endorsed on the policy, and in the second place, the very persons who by the terms of the policy are given this authority, namely, Edward Brown & Sons, general agents, are the persons who issued the policy with the written consent to "other concurrent insurance."

The written portion of the policy prevails over the printed portion.

St. Paul F. & M. I. Co. vs. Balfour, 168 Fed., 215.

The cases, *United Fireman's Fund Ins. Co. vs. Thomas,* 82 Fed., 406, and *Allen vs. German-American Ins. Co.,* 25 N. E., 309, seem to have no application. These cases turn on the authority of a minor agent to bind the insurance company. But in this case the insurance company endorses the consent to other concurrent insurance upon the policy by its general agents, the very persons who have authority to vary the written portions of the policy and to adjust the losses. As we have already said, we are not relying upon a waiver by the company, or by a local agent of the company. If we found it necessary to do so we might claim that the action of Edward Brown & Sons, general agents, operated as an estoppel and a waiver.

The case *Northern Assurance Co. vs. Grand View Building Assn.,* 183 U. S., 308, cited and relied upon by the plaintiff in error as authority for the claim that an insurance company cannot waive the conditions of its policy, by no means goes to that extent, and the general agents of such a company undoubtedly should be held to have that authority.
policy.

The brief of the plaintiff in error lays great stress upon the fact that the Lloyds' policy issued by The Thames & Mersey Marine Insurance Company, Ltd.,

a long time after the fire, would not insure against partial loss of salmon by fire at the cannery, a point which we by no means concede. But if it be true, and the claim also be true that the fire insurance companies' policies covered both for partial and for total loss on salmon, this difference cannot affect the plaintiff in error.

The fact is that this plaintiff in error has not been called upon to pay any loss whatever upon the salmon insured in the marine policies, the insured, on the trial, having waived its right in that respect. It paid for its part of loss on supplies, and on the supplies there was no insurance excepting that of the several fire insurance companies using the standard form of policy.

We fail to perceive any merit in the contention of the plaintiff in error that the methods of adjustment on the salmon loss might under some conceivable circumstances have been different under the marine policies from the methods of adjustment under the fire policies. The question is not whether partial loss would be borne proportionately under the two classes of policies, for nowhere does the policy of plaintiff in error stipulate that all policies on the property must share the loss proportionately. What any other insurance company is liable for, or is willing or unwilling to pay, cannot affect the plaintiff in error, which with all of the numerous conditions written in its policy has certainly not imposed any such restriction. It cannot be important, under this contract,

whether the St. Paul cover note is for excess insurance, or whether it or the Lloyds' Underwriters could or could not have evaded payment for loss on the salmon, because the only interest the plaintiff in error has in such other insurance, (whether valid or not,) is to ascertain the total amount of insurance, upon which is based the calculation of the proportion of liability of the plaintiff in error by the terms of its policy.

It comes with bad grace from an insurance company that has received and still retains the premium paid for this insurance, and has never tendered it back, to make the unconscionable defense here presented.

Respectfully submitted,

CAREY & KERR,

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